

AN
INTRODUCTION
TO THE
KNOWLEDGE
OF THE
LAWS and CONSTITUTION
OF
ENGLAND.

By a GENTLEMAN of the *Middle-Temple*.



L O N D O N :

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MDCCLXIII.

THE BODILY STITCH

TO THE

WOMAN

ANALYSIS of this INTRODUCTION.

LAW is either

CHAP. I. { NATURAL,
 OR
 ARBITRARY, containing

{JUS GENTIUM,
 and
{JUS PUBLICUM; which comprehends the Laws of *England*, which are divided into

CHAP. II. { I. COMMON LAW, which is

{ SPIRITUAL, concerning

{ OFFENCES OR PLEAS, as Blasphemy, Schism, Oblations, Dilapidations, Repairs of Churches, Marriage, Adultery, Fornication, Polygamy, Divorce, Bastardy, Heresy, Ordination, Admission, Institution, Induction, Preaching, Tythes, Modus, Pension, Procurations, Simony, Wills, Legacies, Probates, Intestates, Administration, Penance, Appeals.

{ COURTS, as the Convocation, the Prerogative Court, the Court of Delegates, Arches, Audience, Faculties, the Bishop's Court, the Archdeacon's Court, the Court of Peculiars.

{ PUNISHMENTS, as Excommunication, Penance, Suspension, Deprivation, Degradation.

{ TEMPORAL, the Objects of which are,

{ CAUSES, concerning the Royal Prerogatives, the Rights of Subjects, the Liberty of Subjects, Descent of Land, the Nature of Estates, the Extent of Estates, the Qualification of Estates, the Manner of conveying Estates from one to another, the Ceremony of conveying Estates, the Form of Contracts, the Solemnity of Contracts, the Obligation of Contracts, the Exposition of Deeds, the Exposition of Acts of Parliament, Process, Proceedings, Judgments, Executions, the Bounds and Limits of Courts.

{ COURTS, as the Court of Chancery, the Court of King's-Bench, the Court of Common Pleas, the Court of Exchequer, the Court of the Lord Steward of the King's House, the Court of Marshalsea, the Court of Admiralty, the Court Martial, the Hundred Court, the Court Baron, the Court Leet, the Court of Turn, the Court of Piepowder, Justice-Seat, Swainmote, the Court of Attachment, the Courts of Universities, the Court of Hustings, the Court of Conscience, the Court of Common Council, the Chamberlain's Court, the Wardmote, the Court of Halymote, the Court of Curfus Aquæ, the Courts of Wales.

{ PUNISHMENTS, as Beheading, Drawing, Hanging and Quartering, Drawing and Hanging, Burning, Hanging, Transportation, Imprisonment, Fines, Amerciaments.

CHAP. III. { II. PARTICULAR CUSTOMS, as Borough English, Shortford, Gavelkind, Freebench, Consuetudines Londini, Maii Inductio, Mores Mercatorum, Censure, Marchet, Childwit, Landcheap, Mortuary, Bull and Bear.

CHAP. IV. { III. STATUTES.



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BRITANNICVM

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C H A P. I.

Of the Nature of LAWS in general.

I.

LA W is the Bond of Men's Actions; the Rule of well-governing a civil Society; the Perfection of Reason; the Encourager of Virtue, and Punisher of Vice; the spotless Mirror of the divine Majesty, and the Image of God, given as a Guide for regulating the Thoughts and Actions of Men.

2.

LAWS are NATURAL or ARBITRARY.

3.

NATURAL LAWS are *essentially* good; binding in all Places; being given by God to Mankind, for the Conservation of his Nature, and the Promotion of his perfective End; for which we see a Reason, and feel a Necessity.

B

4. Though

4.

Though *JUS NATURÆ* and *LEX NATURÆ*, are usually confounded by Lawyers and Divines; yet they remain as different as Light and Darknes. For the *Right* of Nature is no Law; neither is the *Law* of Nature a natural *Right*; because *Right* is Liberty, but *Law*, a Fetter: It is not Liberty, unless we can act as we please. Whatsoever, therefore, is a Law or Restraint to it, must needs be superinduced upon it; which Nature herself cannot be supposed to do: And no one else has Power, except God; who is the Lord of Nature, and made our Hearts to be the Repository of her Laws, that they might be always under our Eye, legible and clear.

5.

ST. AUGUSTINE says, The Law of Nature hath but two Precepts. First, *Do as you would be done unto.* Secondly, *Do not that to others which you would not have done to yourself.*

6.

ISIDORE reckons, 1. The Conjunction of the Male and Female. 2. Education. 3. Succession of Children. 4. Common Possessions. 5. Common Liberty. 6. Acquisition of Things in the Air, Earth, and Sea. 7. Restitution of the Thing intrusted. And, 8. Repelling Force by Force. These are the *Rights*, not the *Laws* of Nature.

7.

CICERO reckons, 1. Religion, 2. Piety. 3. Thankfulness. 4. Obedience to Superiors. And, 5. To speak Truth.

8. LAWYERS

8.

LAWYERS reckon, 1. To worship God. 2. To live honest. 3. To obey Superiors. 4. To hurt no Man. 5. To give every one their own. 6. To take away evil Doers from among Mankind.

9.

Thus Men differ in their Enumeration of natural Laws; when as many as we are bound to observe, appear in the New Testament; for all natural Laws must be derived from God. Now it is certain CHRIST told the Apostles all his Father's Will; and the Apostles taught what Christ taught them: Therefore what is not in their Doctrine, is not in Nature's Law. From hence it follows, that the Law of Nature, is the only Measure and Rule of all other Laws; and is as necessary to the Support of the Mind, as Nourishment is to the Body. No man can create new Appetites, or make Hay or Stones his Nourishment. Neither can our Nature be maintained in its perfective End without these Laws; and he who dispenses with them, must have Power to alter the Reason of them. This cannot be done but by superinducing something upon them, greater than the natural Need; which none is able to do, except the eternal Goodness. This is the Reason why the Commands or Prohibitions of the Law of Nature, cannot be altered by the civil Law; though the Strictness of them may be allayed in Cases of Necessity. As every Man is bound to restore Goods intrusted to his Care, when demanded; but if one calls for his Sword to kill a Man, I am not guilty of Breach of the natural Law, if I refuse to deliver it, while he remains so violent and passionate. Or if I promise to meet a Person at a certain Place, and in my Journey thi-

ther, I break my Leg : Now, though by the Law of Nature, I am bound to perform my Promise, yet it becoming accidentally impossible, I am dispensed with. Thus the Law of Nature is a Transcript of the Wisdom and Will of God, engraved in the Tables of our Mind, and set down in the New Testament, as our intire Guide in the natural and essential Duty we owe to the all-supreme Being, as well as to one another ; and is never to be changed by any succeeding Law-giver.

10.

ARBITRARY LAWS are Institutions made by Men, founded on Convenience and the Law of Nature ; and depending on the Authority of the legislative Power that made them, being designed for maintaining public Order. Therefore a Law is unjust, if made by one who has no Authority ; if carried beyond the Intention of the Law-giver, if it do not contribute to the publick Good ; or, when by Change of Things, it becomes inconsistent with the publick Advantage,

11.

To Laws that are just, Obedience is to be paid, according to what is commanded, not according to what seems to be best. *Terquatus Manlius*, being elected Consul of Rome, ordered his Son not to fight on that Day ; but his Son, espying a great Advantage, fought, and gained a glorious Victory ; for which he was crowned with a triumphant Laurel ; but for his Disobedience lost his Head.

12.

The Power of Magistrates in punishing Transgressors of their Laws, with Loss of Estate, Member, Life or Liberty, is very proper. For with-
out

out this coercive Power, there could be no Government; and without a Government, there could be no Communities of Men; Wolves being more sociable, unless restrained by magistrative Authority. Before the Establishment of Government, Violence repelled all Injuries. But because any one in Pain, Grief or Anger, judges unjustly, Princes or Judges were chosen to be the sole Redressers of Injuries. They made Laws that Justice might be administered impartially; yet in Cases where a great Number of Persons are liable to the same Punishment, by being Confederates in a Crime, only the Principals suffer. Thus in a Sedition in an Army, the common Soldiers are to be pardoned, whilst the Commanders or Leaders (who are the Principals) are punished. Otherwise it would not only prove a Damage to the Commonwealth to lose so many Subjects; but might be dangerous, by fomenting rather than suppressing the Sedition. Nor ought one to be punished for the Fault of another: Though the *Thessalians* killed 250, and the *Romans* 300, of the *Volsci*, who were Hostages or Pledges of War, without any Injustice, as was supposed; it being customary for other Nations to do the same. But the Thing itself is not lawful by the Law of Nature, unless the Pledges be equally guilty of the Crime. Neither are Sons to be punished for the Offences of their Father or Grandfather; because they are not guilty of the Transgression. For this Reason, Heirs are not obliged to pay the Debts of their Ancestors, except Assets descend; it being unjust that the Father, who leaves no Estate or Advantage to the Son, should transmit a Burthen to his Issue.

As the wisest Legislature cannot foresee the Inconveniences that may arise, even from the best of Institutions,

Institutions, the Obligation of human Laws is changeable by 1. EQUITY. 2. JUDICIAL INTERPRETATION. 3. DISPENSATION. 4. COMMUTATION. 5. CONTRARY CUSTOMS. And, 6. ABROGATION.

14.

EQUITY, or the Correction of that wherein the Law, by Reason of its Universality, is deficient; and wherein the Mind of the Law-giver is to be more regarded than his Words. It was cruel in *Basilus Macedo*, the *Saracen* Emperor, to cause the Soldier who saved his Life, by cutting asunder the Emperor's Belt, in which a Stag had fastened his Horns, to be killed; because by the Law, it was capital to draw a Sword upon the Prince. For the Law could never intend to make it Death to preserve the Prince. Here was a Necessity; so that if it had not appeared like a Fault, it had been excusable; for Necessity excuses whatsoever it compels to; and when the first Sense of the Words infer any Absurdity, Contradiction, Injustice, or Unreasonableness, the Mind of the Law-giver is supposed to be otherwise, and therefore the Words are not to be adhered to.

15.

JUDICIAL INTERPRETATION, or the Explanation of a Law by the Judges; which does not take off the Obligation, but only declares that in such a Case, it was not intended to bind. And when Judges interpret a Law, they either expound it by Learning and wise Conjectures; or else by Precedents of the Court, and Customs of the Land. For in Questions of Interpretation, there is not any Thing more reasonable than to inquire how the Practice of People was in Times past; because what they did whilst the Sense of the Law was best perceived,

perceived, and what the Law-giver allowed them to do in Obedience to it, may be supposed to be that which he intended. Upon this Account, the adjudged Cases in Law, are the best Indication of the Meaning of it; the Sentence of the Judges conveying the Notice of a Custom, and allowing it reasonable.

16.

DISPENSATION; which differs from Interpretation; because the latter declares the Law in certain Cases not to bind; whereas Dispensation is a voluntary Act of the Prince's Grace and Favour; releasing to any single Person or Community of Men, the Obligation of the Law: Others at the same Time remaining bound, not only in other Cases, but the same.

17.

COMMUTATION, or changing the Burthen of the Law into an Act of it; as when a publick Penance is enjoined to some Person; who by such publick Shame, would be hardened or oppressed, the Church sometimes dispenses with the Obligation; changing it into Alms: Though this should never be done, but upon Considerations of Piety; and not because the Transgressor is powerful and rich.

18.

CONTRARY CUSTOMS; which though they cannot of themselves destroy a Law; by Reason it were no Matter who had the legislative Power, if what was enacted was in the Choice of every one, whether it should be a Law or no: Yet the Power that makes a Law, may allow them to prevail against it. Then the Question is, how to know when the Law-giver is willing his Law shall submit to a contrary Custom?

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tom? Answer. By his tacit consent, and secret Approbation.

19.

ABROGATION, or the taking away the Force of a Law; the Causes of which are all those that make a good and wise Man change his Mind: As new Emergencies, unfit Circumstances, publick Dislike, and a greater Good. For the same Power that makes a Law, can annul it; and the same Reason that introduced it, can also change it. To enforce the Obedience of a Law, it must be made by a competent Authority; it must be just; and it must be promulged. The Defect of any of these Particulars, is sufficient to abrogate it. If a Law be unjust, it ceases of itself; if useless, it falls into Neglect: If not punished, it is not born; and if it is generally disliked, it is supposed to be uncharitable; and is as if it were unborn; for it will be starved at nurse.

20.

The learned *Selden* says, the Laws of every Country began, when there first began to be a State. And if we consider the World as one universal Society; then that Law, by which all the Nations are governed, is *JUS GENTIUM*, or the LAW OF NATIONS. But if the World be considered as made up of particular Nations, the Law that regulates each Kingdom, is *JUS PUBLICUM*, or the PUBLICK LAW.

21.

Under this last Head may be placed the Laws of this Land; in which *Dunwallo Molmutius*, sixteenth King of the *Britains*, who reigned 400 Years before the Birth of our Saviour, is said to have first published a Book of Laws. Nor were these Laws an-
nulled

nulled by the *Romans*, who in the 84th Year of Christ, and the 139th Year from the first landing of *Julius Caesar*, reduced this Island to a *Roman* Province, and governed it by their own Laws, which flourished till the Year 408, when one *Constantius*, a common Soldier, being raised to the Imperial Dignity, purely for the Sake of his Name, which was thought fortunate, drew together all that could bear Arms, as well *Romans* as *Islanders*, and with this Army left the Kingdom. The *Britains*, after the Departure of the *Roman* Soldiers, and the Flower of their Youth, being reduced to great Extremities by the *Picts* and *Scots*, who committed continual Ravages, called the *Saxons* to their Aid; who, overcoming the *Picts* and *Scots*, quarrelled with the *Britains*; and in the Year 504, after a War of 130 Years, intirely drove them into *Wales*, and formed the Heptarchy; changing the Name of the Land from *Britain* to *England*, and introducing their own Laws, which were promulged about the Year 596 by *Ethelbert*, King of *Kent*. *Ina*, King of *Essex*, about the Year 724, published a Body of Laws under the Name of *West Saxon Leaga*. Likewise *Offa*, King of *Mercia*, about the Year 794, wrote a Book of Law, entitled *Merchenlaga*: And in the Year 896, and the 69th after the Heptarchy, *Alfred* the Great, the sixth King of all *England* after the Heptarchy, collected the best Laws he could find; in which he inserted many of the judicial Laws out of the Old Testament, and several of King *Ina*'s and King *Offa*'s Laws, with many of his own. Next *Edgar* the Peaceable, the 12th King after the Heptarchy, about the Year 961, made several Laws: two whereof shew his Wisdom and Justice. One was in order to destroy the Multitude of Wolves, that came down in Drovers from the Mountains of *Wales*, making such Destruction amongst the
C Flocks

Flocks and Herds, that the Country was in continual Alarm. This Law converted the Tribute of Gold, Silver and Cattle, paid yearly by the *Welch*, into 300 Wolves Heads; and granted a general Pardon for all past Offences, on Condition each Criminal brought him by such a Time, a certain Number of Wolves Tongues, in Proportion to his Crimes. The Effect answered the Design; for in three Years there was not one left in the Kingdom. The other Law was against Bribery and Corruption in Magistrates, who abused the exorbitant Power *Edgar's* Predecessors suffered them to usurp during their Wars, and were become intolerable to the Nation. This Law enacted, that every Judge, convicted of giving Sentence contrary to the Laws, should be fined 120 Shillings, if done ignorantly; but if knowingly, he was cashiered for ever.

21.

In the Year 1013, *Swein*, King of *Denmark*, conquered *England*, and established *Danish* Laws. And in the Year 1025, *Canute* his Son, the second *Danish* King of *England*, and the 17th from the Heptarchy, convened a Council to confirm the *Danish* Laws. There were three Sorts of Laws then in *England*. *Kent*, *Suffex*, *Surrey*, *Berkshire*, *Hampshire*, *Wiltshire*, *Somerset* and *Devonshire*, observed the Laws, called *West-Saxon-Lage*. *Gloucester*, *Worcester*, *Hereford*, *Warwick*, *Oxford*, *Stafford*, *Cheshire*, and *Shropshire*, retained the Laws called *Merchenlage*. And *York*, *Derby*, *Nottingham*, *Leicester*, *Lincoln*, *Northampton*, *Bedford*, *Hertford*, *Effex*, *Middlesex*, *Norfolk*, *Suffolk*, *Cambridge*, *Huntington*, and *Buckinghamshire*, were governed by the Laws called *Danelage*. All these Laws held an Uniformity in Substance; differing rather in their Mulcts and Penalties, than in the Course and Frame of Justice.

About the Year 1047, *Edward the Confessor*, the third of that Name, and the twentieth King from the Heptarchy, reduced the Laws into a Body; which from that Time became *common* to all *England*. And in the Year 1080, *William the Conqueror*, on a Review of the several Laws and Customs of this Kingdom, abrogated some, abolished others, and added many of his own Country; ordaining this System or Assemblage to be the Law of the Land: From whence the present are derived; which consist of three Parts, *viz.* *JUS COMMUNE*, or COMMON LAW; *MORES*, or PARTICULAR CUSTOMS, and *CONSULTA SENATUS*, STATUTES or ACTS OF PARLIAMENT.

C H A P. II.

Of the COMMON LAW.

1.

COMMON LAW is a Body of Rules, generally received and held as Law in this Nation, before any Statute was made to alter them.—It is the Birth-Right of the Subject, not only for the Security of his Goods, Land and Wealth; but of his Wife, Children, Body, Fame, and Life: And contains SPIRITUAL and TEMPORAL LAWS.

2.

SPIRITUAL LAWS are composed of divers immemorial Customs; our own provincial Constitutions and Canons, made in Convocation; Acts of Parliament concerning Religion, or Matters of ecclesiastical Cognizance; the Rubricks in our Common-Prayer Book, founded upon the Statutes of Uniformity; the Articles of Religion drawn up in the Year 1562, and established by the Statute of 13 Eliz. C. 12. and the general Canon Law. This last consists partly of certain Rules, taken out of the Scripture; partly of the Writings of the ancient Fathers of the Church; partly of the Ordinances of General and Provincial Councils; and partly of Institutions of the Popes in former Ages; which were either DECREES, or DECRETALS.

3.

✓ DECREES are Ecclesiastical Constitutions made by the *Roman* Emperors, and the Pope and Cardinals; first collected together by *Ivo*, Bishop of *Carnat*,

Carnat, who lived about the Year 1114; but afterwards perfected by *Gratian*, a Benedictine Monk, in the Year 1149, and allowed by Pope *Eugenius* to be read in Schools, and cited as Law. They shew the Rights, Dignities and Degrees of Ecclesiastical Persons, with their Manner of Election.

4.

DECRETALS are Canonical Epistles, written by the Pope, or by the Pope and Cardinals, for the ordering and determining Matters of Controversy. Of these there are three Volumes: The first compiled about the Year 1231, by *Raymundus Barcinus*, Chaplain to *Gregory* the Ninth, and at his Command. The second Volume is the Work of *Boniface* the Eighth, about 1298. And the third Volume, called the *Clementines*, was made by *Clement* the Fifth, and published in the Council of *Vienna* about 1308. To these may be joined the *Novel* Constitutions of *John* the Twenty-second, and other Bishops of *Rome*. These Decretals contain the Law to be used in Ecclesiastical Courts; and the first Title in every of them, is the Title of the Blessed Trinity, and of the Catholick Faith; which is followed with Constitutions and Customs, Judgments and Determinations in such Matters and Causes, as are liable to ecclesiastical Cognizance; the Lives and Conversation of the Clergy; Matrimony and Divorces; Inquisition of criminal Matters; Purgation, Penance, Excommunication, &c. The Statute of 25 *Hen. 8. c. 19.* allows of this general Canon Law, so far as it is not repugnant to the King's Prerogative, and the Laws, Statutes, and Customs of the Realm: And also ordains that Canons made in Convocation, and confirmed by the King, shall be as binding in Ecclesiastical Courts, as Acts of Parliament are in other Cases.

Thus

Thus the Convocation for the Province of *Canterbury*, was held by Virtue of the King's Writ at *London*, in the Year 1603; wherein several Canons were made for the Government of the Church, Religion and Clergy; which Canons had the Royal Assent, and still remain in Force. By these Spiritual Laws, are tried Causes of, or relating to,

1. BLASPHEMY. 2. SCHISM. 3. OBLATIONS.
4. DILAPIDATIONS. 5. REPAIRS OF CHURCHES.
6. MARRIAGE. 7. ADULTERY. 8. FORNICATION.
9. POLYGAMY. 10. DIVORCE. 11. BASTARDY.
12. HERESY. 13. ORDINATION. 14. ADMISSION.
15. INSTITUTION. 16. INDUCTION. 17. PREACHING.
18. TITHES. 19. MODUS. 20. PROCURATIONS.
21. SIMONY. 22. WILLS. 23. LEGACIES.
24. PRELATES. 25. INTESTATES.
26. ADMINISTRATION. 27. PENANCE. 28. APPEALS.

5.

BLASPHEMY, or an Injury to God, by denying that which is due and belonging to him, or attributing to him what is not agreeable to his Nature.

6.

SCHISM, or Division of the Church, occasioned by the seditious Doctrines of Non-Conformists; to prevent which, the Statute 12 *Ann. Sess. 2. C. 7.* was made.

7.

OBLATIONS, or Things offered to God and his Church, by pious and faithful Christians.

8.

DILAPIDATION: When an Incumbent of a Church suffers the Parsonage-House, or Out-Houses to fall down, or be in Decay for Want of necessary

necessary Reparations : Or pulls down or destroys any of the Houses, Buildings, Trees, Woods, or other Appurtenances belonging to a spiritual Living ; or permits any Damage to be done to the same ; ^a the Executors or Administrators of him, ^a Nelf. Abr. 656. in whose Time such Dilapidation was done or suffered, must make Amends to the Successor. If they refuse, he hath a proper Remedy in the Spiritual Court ; or he may bring an Action of Debt against them at Common Law ; in which Action he shall recover Damages in Proportion to the Dilapidations. ^b And if any Incumbent, or his Executors or Administrators, shall make a Gift of his Goods and personal Estate, to defraud his Successor, as to Dilapidations ; such Successor may have the same Remedy in the Spiritual Court, against the Person to whom such Gift is made, as he might have against the Incumbent, or his Executors and Administrators. ^b 13 Eliz. C. 10. ✓

9.

REPAIRS OF CHURCHES ; ^c the Chancel whereof ^c 35 Ed. 1. is to be repaired by the Parson ; unless there be a Custom to the contrary. He may for these Repairs, cut down Trees in the Church-Yard, but not otherwise. ^d And the Church-Wardens are to see ^d 1 Mod. 236. that the Body of the Church and Steeple are in Repair ; but not any Isle, Pew or Seat, which is claimed by Prescription as the Property of a certain Person, Family, or House. ^e In London, the Parishioners repair both Church and Chancel ; and ^e 1 Mod. 194. ^f Vent. 367. the Spiritual Court may compel them to it, and excommunicate every one of them till done ; but those that are willing to contribute shall be absolved till the greater Part agree, and the Excommunication taken off : ^f Though Rates for Repairs are to be made by Church-Wardens, and the major Part of the Parishioners ; which shall bind the ^f 1 Vent. 367. 2. Roll. Abr. 291.

the rest after a general Notice given, unless the Parishioners refuse or neglect to meet upon such Notice, or on meeting make a Rate; and then the Church Wardens and Overseers of the Poor may make a Rate, and levy it on the Parishioners; the Rate being first confirmed by the Ordinary or Archdeacon. And if a Parish is unequally rated, those who are aggrieved, must plead it in the Spiritual Court, when sued there.

10.

MARRIAGE, or the full, free and mutual Consent between Persons not disabled to enter into that State, by their near Relation to each other, Infancy, Pre-Contract, or Impotency. The Solemnization of Marriage is regulated by the Laws and Customs of the Nation.

11.

ADULTERY, or the Sin of Incontinence in married Persons; if but one of the Persons is married, it is called single Adultery, to distinguish it from that which is committed by two married Persons.

12.

FORNICATION, or the Sin of Incontinence in unmarried Persons.

13.

POLYGAMY, or a Man's having two or more Wives, or a Woman's having two or more Husbands at the same Time; whereby the first is injured.

14.

DIVORCE, or Separation of married Persons; which is either *a Mensa et Thoro*, or *A Vinculo Matrimonii*.

crimonit. The ¹ first dissolveth not the Marriage; ² 1 Inst. 235. 3
the Cause being subsequent to it; and supposes it ^{Inst. 89. 7 Rep.}
lawful; being occasioned by Adultery in either of ^{43.}
the Parties; Cruelty of the Husband, or the like.

And ^h therefore hinders not the Woman from su- ^{h Wood's Inst.}
ing by her next Friend, or prosecuting her Hus- ^{62.}
band in her own Name for Alimony. The ¹ other ¹ 1 Inst. 335.
makes the Marriage absolutely void, the Cause be- ² Inst. 93, 687.
ing precedent to it; as Precontract, Consanguinity,
Impotency, Impuberty, or some such Matter. By
this Divorce, Dower is gone; and if for Precon-
tract, Consanguinity or Affinity, the Children are
Bastards. Yet the ^h Wife shall receive again all ² Dyer 62. 1
that she brought, because the Nullity arises through ^{Nels. Abr. 675.}
some Impediment in the Husband; and the Goods
of the Wife were given for her Advancement in
Marriage, which now ceaseth. Wherefore the
Wife may bring an Action of Detinue for them;
and as for Money, which cannot be known, she
must sue in the Spiritual Court. But this is where
the Fortune is not spent; for if the Husband has
given them away during the Coverture, without
any Collusion, it shall bind her.

15.

BASTARDY, or the Defect of Birth by being born
out of Wedlock; ¹ though if there by any Impedi- ¹ Inst. 244. 3
ment in the Husband, which shews an Impossibility ^{Dan. 278.}
to get Children, the Issue are Bastards.

16.

HERESY, or false Opinion, repugnant to some
essential Point of Doctrine contained in Scripture,
obstinately maintained by such as profess the Name
of Christ. It is properly Obstinacy, and not Error
that makes it; for when a Man allows every Thing,

D

urged

urged against him, its due weight, he is not guilty of Heresy.

17.

ORDINATION, or initiating a Person into sacred Orders: No one being capable of taking an ecclesiastical Promotion or Dignity, without being ordained a Priest. A Clerk is to be twenty-three Years of Age; and to have Deacons Orders before he can be admitted into any Share of the Ministry; and a Priest must be twenty-four Years of Age before admitted into Orders, to preach or administer the Sacraments. Deacons and Priests are to be ordained only upon the four *Sundays* immediately following the *Ember Weeks*; except upon urgent Occasions. And it is to be done in the Cathedral or Parish-Church, where the Bishop resides, in Time of divine Service, in the Presence of the Arch-Deacon, Dean and two Prebendaries; or of four other grave Divines; and the Person to be ordained Priest, must bring a Testimonial of four Persons known to the Bishop, of his Life and Doctrine; and to be able to give an Account of his Faith; and subscribe the thirty-nine Articles of Religion, and take the Oath of the King's Supremacy, as directed and altered by the First of *William and Mary, Sess. 1. C. 8. §. 7.* and 1 *George I. C. 13.* And if any Impediment or Crime be objected against the Person at the Time of his Ordination, the Bishop must surcease from ordaining, until he shall be cleared of that Impediment or Crime.

18.

ADMISSION, or being presented to a Living after due Examination, by the Bishop's saying, *Admitto te habilem*; and upon a Bishop's refusing to admit a Clerk, the 2^d Remedy is by Writ *Quare non Admisit*

or *Admittendum Clericum* brought in that County, where the Refusal was.

19.

INSTITUTION; which ^a is when a Bishop says to a Clerk, who is presented to a Living, *Instituto te rectorem talis Ecclesie cum Cura Animarum et accipe Curam tuam et meam*; and may be granted either by the Bishop under his Episcopal Seal; or it may be done by the Bishop's Vicar-General, Chancellor or Commissary; whose Acts are taken to be the Acts of the Bishop. Also Letters Testimonial of Institution, may be granted by the Bishop, though he is not in his Diocese; to which some Witnesses should subscribe their Names. And ^o if a Bishop refuse to grant Institution, the Party may have his Remedy in the Court of Audience of the Archbishop, by *Duplex Querela*. On ^p Institution, the Clerk has a Right to enter on the Parsonage-House and Glebe, and take the Tithes; but he cannot grant, lett or do any Act to charge his Benefice, until inducted, by reason he is only instituted *ad Officium* to preach and pray; and therefore not intitled *ad Beneficium*, until formal Induction.

^a 1 Inst. 344.
Clergym. Law,
109.

^o 2 Roll. Abr.
220. 4 Rep.
79.

^p Plowd. 528.

20.

INDUCTION, or ^a giving a Parson Possession of a Church. For when the Bishop hath granted Institution, he issues out his Mandate to the Archdeacon to induct the Clerk; who may do it in Person, or by Commission. If by Commission, one of the Clergymen commissioned, takes the Parson by the Hand, and lays it on the Key of the Church, pronouncing these Words, "By Virtue of this Commission, I induct you into the real and actual Possession of the Rectory of _____ with all its Appurtenances." Then he opens the Door, and

^a Country Par.
Comp. 21, 22.

D 2

puts

puts the Parson into Possession, who commonly tolls the Bell to give the People Notice that he hath taken Possession of the said Church. If the Key of the Door cannot be had, the Clerk to be inducted may lay his Hand on the Ring of the Door, the Latch of the Church-Gate, or on the Church-Wall. Also Induction may be made by the Delivery of a Clod or Tuft of the Glebe. And ^r after Institution, if the Archbishop inhibits the Archdeacon to induct, he may do it notwithstanding. ^r Induction made by the Patron is void, except Bishops and Archdeacons, who may induct a Clerk to Benefices, of which they are Patrons by Prescription. It is not the ^r Admission and Institution, but Induction to a second Benefice, that makes the first void in Case of Pluralities.

^r 4 Rep.

^r 11 Hen. 4.

^r Moor. 12.

15.

^r Can. 44, 45,
49.

PREACHING. Every ^u beneficed Preacher, residing on his Benefit, and having no lawful Impediment, shall in his own Cure, or some neighbouring Church, preach one Sermon every Sunday. And if any beneficed Person be not allowed to preach, he shall procure Sermons to be preached in his Cure by licensed Preachers; and every Sunday whereon there is not a Sermon, he or his Curate, shall read some one of the Homilies; also no Person not examined and approved by the Bishop, or not licensed, shall preach in any Church; and Church-Wardens are to note in their Book, the Names of all strange Clergymen that preach in their Parish, to which Book every Preacher is to subscribe his Name, the Day when he preached, and the Name of the Bishop of whom he had licence to preach.

19.

^r 11 Rep. 13.
^r Cro. 293,
314.

TITHES, ^r or the tenth Part of the Increase yearly arising from the Profit of Lands, and the Industry

Industry of the Parishioners of any Parish, payable to the Clergy for their better Maintenance; the Priests and Ministers of the Altar, living at first wholly on Oblations; when the Laity, from Motives of Piety, voluntarily gave them a certain Portion of their Revenues. This Gift was called Tithes, though not a tenth Part of their yearly Income, nor near so much; but the Prelates, not satisfied with that, got succeeding Princes to consent to their making an express Law, whereby they obliged the Laity to give them a full tenth of their Revenues and Profits. From hence Tithes grew to be an ecclesiastical Inheritance, collateral to the State of the Land, and a spiritual Duty not released by a Release of all Demands of a Parishioner out of his Lands. No^y Man had a Property in Tithes, 7 Hob. 296 until the Council of *Lateran*, held in the Reign of King *John*; wherein a Canon was made, compelling every Person to pay Tithes to the Parson or Vicar of the Parish, where they arise; because before that Time, the Bishop of every Diocese made a general Distribution of Tithes, to spiritual Persons, for charitable Uses; and for Repairs of the Church. And since the Statutes of Dissolution of Abbies, made the 27th and 28th *Hen. 8.* they have been, and at present are, transferred to² Laymen. And 2 Inst. 490,
649, 656. Tithes are three Kinds, **PREDIAL, PERSONAL,** and **MIXT.**

20.

PREDIAL TITHES, immediately arise from the Land, either by Manufacture, or of its own Nature; as Corn, Grain, Hay, Wood, Fruit and Herbs; and those are due without deducting the Costs.

21.

PERSONAL TITHES arise from the Labour and Industry of Man only; being the tenth Part of his clear

clear Gains in Trade, after Charges deducted; due by Custom, and payable where the Person dwells, and hears divine Service.

22.

• 1 Roll. Abr.
643. 1 Cro.
578. Wood's
Inst. 162.

MIXT TITHES, arise not immediately from the Ground, but proceed from Cattle and other Things, that receive their Nourishment from the Productions of the Earth. As to their Value, they are divided into GREAT TITHES, and SMALL TITHES.

23.

GREAT TITHES, are Corn, Hay and Wood, and generally belong to the Rector.

24.

• Cro. Car. 20.

SMALL TITHES, comprehend all other predial Tithes, as also Tithes personal and mixt; though some Things may be *great* or *small* Tithes, in regard of the Place; as Hops in a Garden are small Tithes, and in a Field may be great Tithes, for the Quantity will turn a small Tithe into a great one. Small Tithes generally belong to the Vicar.

25.

• 2 Rol. Rep.
47.

• 1 Roll. Abr.
653. Count.
Par. Comp. 159.

MODUS. When Lands, Tenements, or some certain Sum or other Profit, hath been given Time out of Mind, to a Parson and his Successors, in full Satisfaction and Discharge of all Tithes in Kind in a particular Place, it arises by COMPOSITION, CUSTOM, or PRESCRIPTION.

26.

COMPOSITION, is an Agreement entered into by Deed, executed under Hand Seal, that such and such Lands shall be discharged of Tithes in Kind, upon

upon paying some annual Sum, or doing something for the Benefit and Advantage of the Parson and his Successors; and a Composition is a legal Exemption from Tithes in Kind for ever, if made before the Statute of the 13 *Eliz. Cap. 10.* Also ^{March's Rep. 87.} Compositions are *real* or *personal*. *Real* when made with the concurrent Consent of the Parson, Patron and Ordinary; and *Personal*, if only by Agreement between the Parson and Parishioners, to pay so much instead of Tithes. And though such Agreement is confirmed by the Ordinary; yet that doth not make it a *Real* One; because he ought to be Party to the Deed of Composition. Nor shall the Compositions made with the Consent of the Parson, Patron, and Ordinary, bind the Successor, unless made for twenty-one Years or three Lives, as in Cases of Leases of ecclesiastical Livings. ^{13 Eliz. C. 10.}

27.

CUSTOM; which gives a Right to a whole County, City, Town or Parish, and must be common to all within the Limits, where its averred to be.

28.

PRESCRIPTION, which gives a Right to some Person, with respect to a certain House, Farm or Land, to be exempt from some particular Sort of Tithes. The ecclesiastical Laws allow forty Years to make a good Custom or Prescription; but by the common Law, it must be beyond the Memory of Man. Also ² Moduses ought to be the full Value of the Tithes at the Time of their being made; and if a Modus doth not come up to that Value, it shall be intended that the Tithes are improved, or that Money is become of less Value than it was at this Time of the Modus agreed on. ^{2 13 Rep. 152. Hob. 40.}

29. PENSION

F. N. B. 51.
Hardr. 30.
Vent. 120.

29.

PENSION; ^h which is a certain Sum of Money paid to Clergymen in Lieu of Tithes; and some Churches have Pensions or Annuities paid them by other Churches, arising from some Decree made by an Ecclesiastical Judge upon a Controversy for Tithes; whereby the Tithes are to be enjoyed by one, and a Pension, instead thereof, paid to another: Or they have arisen by Virtue of a Deed made with the Consent of the Parson, Patron and Ordinary; and if such Pension hath been usually paid for twenty Years, then it may be claimed by Prescription, and be recovered by the Incumbent in the Spiritual Court, or at common Law, by a Writ of Annuity; but if he takes this latter Remedy, he can never after sue in the Spiritual Court.

30.

Hardr. 180.

PROCURATIONS, or ⁱ Proxies are certain Sums of Money, which Parish-Priests pay yearly to the Bishop or Archdeacon, *Ratione Visitationis, Consuetudinis et pacti*. The first is of ecclesiastical Cognizance, and the two last of temporal.

31.

31 Eliz. C. 6.
Inst. 120.

SIMONY, or a Contract for presenting Persons to Benefices for the Sake of Reward. But ^k if any Person, for any Sum of Money, Gift or other Advantage, shall present or collate any Person to any Dignity or Living Ecclesiastical, such Admission and Induction shall be void, and the Crown shall present that Time; and the Person that shall give or take any Sum of Money, or make any Promise, shall forfeit double the Value of one Year's Profit of such Benefice; and the Person so corruptly taking of it, shall from thenceforth be disabled to have the same.

32. WILLS

WILLS, or the 'solemn Act or Instrument,^{1 Co. Litt. 111.} whereby a Person declares his Mind and Intention, shews in what Manner he would have his Lands, Goods or Effects distributed after his Death. The^m Common Law calls that a *Will*, where Lands or^m 1 Inst. 111. Tenements are given; terming that which concerns Goods and Chattels alone, a *Testament*. In a Will of Goods, there must be an Executor appointed; but not of Lands only without Goods; an Executor having nothing to do with the Freehold. If^a Lands are given by Will, it is called a *Devise*; ⁿ Swinb. 24. which is sometimes executory, whereby a future Interest is bequeathed. As when the Fee is by Devise vested in one; yet goes to another on the happening of a particular Contingence; and if Goods or Chattels are bequeathed, such Bequest is termed a Legacy. Devisees may enter on the Estates left them, but without the Appointment of others. But^o Legatees must have the Consent of the Execu-^o Wood's Instr. tor to take their Legacies. Also a Will of Land^{329.} ought to be proved in the Chancery, and of Goods in the Spiritual Court; and both may be proved in the latter.

33.

LEGACY, or a particular Thing given by a Person's last Will and Testament; and he to whom it is given, is called a Legatee. ^p There is likewise a ^p 6 Hen. 7. Residuary Legatee, to whom the Residuum of the ¹ Chanc. Rep. Estate is left; and such being made Executor with ^{238.} Show. 26. others, may retain against the rest. Where there are two Residuary Legatees, and one dies intestate, his Administrator shall have a Moiety of the Surplus; because by making them Residuary Legatees, the Testator intended an equal Share to both; and if a Residuary Legatee dies before the Will is proved, his Executors shall have Administration.

E

Legacies

* Allen, 38.

Legacies ^q being Gratuities, not Duties, Action will not lie at Common Law for their Recovery; but Remedy is to be had in the Chancery or Spiritual Court.

34.

* Blount,

* 4 and 5 Ann.
C. 6.* 2 Nelf. Abr.
33 1.

PROBATES, ^r or the exhibiting and proving last Wills and Testaments before the Ecclesiastical Judge, delegated by the Bishop; who is Ordinary of the Place where the Parry dies. If all the Testator's Goods are in one Diocess, the Bishop thereof grants the Probate; but if the Testator's Goods, of the Value of five Pounds, or above, are out of the Diocess, where he lived, the Archbishop of that Province grants the Probate. The ^r Power of granting Probates, and Administrations of the Goods of Persons for Wages or Work, done in the King's Docks and Yards, is given to the Ordinary of the Diocess where the Person dies, or to him to whom Power is given by such Ordinary. ^r Wills are proved IN COMMON FORM, OR BY WITNESSES.

35.

IN COMMON FORM, by granting Letters Testamentary to the Party who exhibits the Will, merely upon his Oath, that he believes it to be the last Will of the Deceased; this Kind of Probate may be controverted at any Time.

36.

BY WITNESSES, when the Executor, besides his own Oath, produces Witnesses to prove it the last Will of the Deceased; and this in Presence of the Parties who claim any Interest, or in their Absence, after they have been summoned. This Manner of proving Wills cannot be questioned after thirty Years.

37. INTES-

37.

INTESTATES are those that die without making any Will or Disposition of their personal Estate, which by the 22d and 23d of Car. II. C. 10. after Debts and Funeral Expences are paid, is to be distributed among the Wife and Children; or for Want of such, to the next of Kin; and the ^u Act ^u 1 Lill. Abr. doth immediately, upon the Death of the Intestate, ^{487.} vest an Interest in the Person intitled; so that if any dies before the Distribution, though within the Year, his Share shall go to his Executors or Administrators, and not to the Survivors, and next of Kin to the Testator. And if a ^x Man makes a ^x 2 Inst. 397. Will, appointing Executors, who refuse to act, he dies *quasi Intestatus*.

38.

ADMINISTRATION; which may be granted during a certain Time, or continually, on Condition, or absolutely. First, to the Husband of the Wife's Goods, or to the Wife of the Husband's Goods. Secondly, to the Children, Sons or Daughters. Thirdly, to the Father or Mother. Fourthly, to the Brothers or Sisters of the whole or half Blood. Fifthly, to the Uncle, Aunt, or Cousin. Sixthly, to a Creditor of the Deceased; and for Want of all these, to any Person, at the Discretion of the Ordinary, who may grant Administration to a Stranger *ad Colligendum bona defuncti*. If an ^y Administrator dies, his Executors do not succeed to the Administration; but the Ordinary, in such Case, is to grant a new Administration. If a ^z Man, ^z Dyer 294. who has Goods in two Provinces, makes a Will of ^{Plowd. 279.} his Goods in one of them, and dies Intestate; as ^{Hob. 255.} to those in the other, Administration may be ^z 1 Anderf. 2 granted for the Goods in that Province. Or if ^{Yelv. 29, 115} ^{Moor 13.}

E 2

one

one dies in *Ireland*, and has nothing but a Specialty for Money, which lies in *England*; Administration shall be granted by the Ordinary of the Diocess, within which, the Place is where the Money lies, and not the Ordinary of that Place where the Debt began. And by the Statute 22 and 23 Car. II. C. 10. when a Person dies intestate, his Estate is to be distributed, One-third to the Wife, and the rest equally amongst the Children and their Representatives. If no Children, one Moiety of the personal Estate goes to the Wife, and the Residue equally to the next of Kin; but if only Children, it shall be distributed amongst them; and if neither Wife nor Children, to the next of Kin in equal Degree. And when ^b Children die after their Father, without Wife or Child, the Mother and every Brother and Sister, and their Representatives, shall have an equal Share: But no Representatives are allowed after Brothers and Sisters Children. And as for Children advanced by the Intestate in his Life-Time, with any Estate equal to the other Shares, they are excepted, though not the Heir at Law, who is to have equal Share in the Distribution, notwithstanding what he hath by Descent. Yet this ^c Statute does not extend to the Estates of Feme Coverts, who die Intestate; in which Case, the Husband shall have Administration as before the Act, and not be compellable to make Distribution ^d. On granting Administration, Bonds with Sureties are to be taken for the Administrator, to make and exhibit an Inventory of the Goods of the Deceased, render a just Account, and make a Distribution of the Surplusage after Debts paid according to Law.

^b 1 Jac. II. C. 37.

^c 29 Car. II. C. 3.

^d 22 and 23 Car. II. C. 10.

39.

PENANCE, is a Punishment imposed for a Crime by the Ecclesiastical Laws, and may be commuted

puted into a Sum of Money, to be applied to pious Uses.

40.

APPEALS, or removing Ecclesiastical Matters from an inferior Court or Judge, to a superior.

41.

The SPIRITUAL COURTS are the CONVOCATION, the PREROGATIVE COURT, the COURT OF DELEGATES, ARCHES, AUDIENCE, FACULTIES, the BISHOP'S COURT, the ARCHDEACON'S COURT, and the COURT OF PECULIARS.

42.

The CONVOCATION, is an Assembly of all the Clergy; of which there are two Houses. In the *Higher* or upper House, the Archbishops and Bishops sit. In the *Lower*, the Deans, Archdeacons, one Proctor for every Chapter, and two Proctors for all the Clergy of each Diocese, sit; making in the Whole One Hundred and Sixty-six Persons. Each House choose a Prolocutor or Speaker; and the Prolocutor of the *Lower* House, is presented to the *Upper*. The Archbishop of *Canterbury* is President of the Convocation, and prorogues and dissolves it by Mandate from the King. This Court consults of Ecclesiastical Matters; 25 Hen. VIII. makes Canons; examines and censures heretical and schismatical Books and Persons. And Appeal lies from hence to the King in Chancery, or to his Delegates. 4 Inst. 322. Roll. Abr. 225. The Clergy, called to Convocation, have the same Privilege as Members of Parliament. 8 Hen. VI. C. 1. The Prolocutor's Office is to cause the Clerk to call the Names of such as are in the House, when he sees Cause; to read all Things propounded,

propounded, and has the Order and Government of the House.

43.

The PREROGATIVE COURT, belonging to the Archbishop by his ^h Prerogative; who hath Pre-eminence in certain Cases, above the other Bishops. ⁱ Here all Wills are proved, and Administration granted; particularly where the Deceased had Goods of the Value of five Pounds or upwards, out of the Diocess, where he died. Also Controversies between two or more, touching the proving, granting, or revoking Wills and Administrations, concerning Accounts upon the same, or Legacies bequeathed, are tried in this Court; though Legacies may now be recovered in the inferior Court, under whose Jurisdiction the Executor dwells. And the ^k Archbishop hath Probate of a Bishop's Testament, if there are not *Bona Notabilia*; or where a Person dies beyond Sea. The Proceedings of this and other Ecclesiastical Courts are by Citation, which is a Summons for the Defendant to appear. Upon whose Appearance, the Libel or Declaration, containing the Action, and shewing first the major Proposition, or just Cause of the Petition; next the Narration, or minor Proposition; and lastly, the Conclusion which conjoins both Propositions, is exhibited against the Defendant; who must put in his Answer thereto upon Oath. Whereupon Witnesses are examined, the Cause tried, and the Decree made. From which Decree, Appeal ^l lies to the King in Chancery; who appoints Delagates; who upon revoking a Will, ^m cannot grant Administration; their Power being only to hear and determine the Appeal.

^a De Antiq.
Britan. Eccl.
C. 8. §. 25.
ⁱ 1 Vent. 233.
Wood's Inst.
592.

^k 4 Inst. 335.

^l 25 H. VIII.
C. 19.

^m Bull. 2 Roll.
Abr. 233.

The COURT OF DELEGATES; the ^a Judges ^a 4 Inst. 319.
whereof sit by Virtue of the King's Commission un- ^{25 Hen. VIII.}
der the Great Seal, upon Appeals to the King in C. 19.
three Cases. First, when a Decree is given in an
Ecclesiastical Cause by the Archbishop, or any of
his Officials. Secondly, when any Decree, in an
Ecclesiastical Cause, is given in Places exempt or
Peculiars, belonging to the King, or an Arch-
bishop. And thirdly, when a Sentence is given in
the Court of Admiralty, in a Civil and Marine
Cause, according to the Civil Law.

The COURT OF ARCHES, which is the chief and
most antient consistory Court, belonging to the
Archbishop of *Canterbury*. The Judge is stiled
Dean of the Arches; and hath extraordinary Ju-
risdiction in all Ecclesiastical Causes, and Appeals
from Bishops, Chancellors, Commissioners, Deans
and Chapters, Archdeacons and others, except what
belongs to the Prerogative Court. He hath also
ordinary Jurisdiction throughout the whole Pro-
vince of *Canterbury*, in Cases of Appeal; so that
upon Appeal made, he without further Examina-
tion, sends his Citation to the Appellee, and his In-
hibition to the Judge from whom it was made.
But he ^o cannot cite a Person out of the Diocess of ^o 28 Hen. VIII.
another, unless on this Occasion. C. 9.

The COURT OF AUDIENCE belongs to the Arch-
bishop of *Canterbury*; hath the same Authority with
the Court of the Arches, and is held in the Arch-
bishop's Palace, where formerly were tried a great
many

many Causes, but before the definitive Sentence, committed the Matter to be tried by Men learned in the Law, who were named Auditors, from whence it vested in one Person, who is now called *Causarum Negotiorumque Audientie Cantuariensis Auditor Officialis*.

47.

p 4 Inst. 337.

The COURT OF FACULTIES, belonging to the Archbishop of *Canterbury*; and the chief Officer thereof is the Master of the Faculties; who has Power by the 25th *Hen. VIII. Cap. 21.* to grant Dispensations to marry without Banns being asked, and divers other Prerogatives. In this ^p Court are registered the Certificates of Bishops and Noblemen, granted to their Chaplains, to qualify them for Pluralities and Non-Residence.

48.

The BISHOP'S COURT, held in the Cathedral Church, or other convenient Place in each Diocess; the Judge whereof is the Bishop's Chancellor; who hears Causes, grants Administration, proves Wills, and has Jurisdiction of other Matters. If the Diocess is so large that People cannot come to this Court without great Inconveniency, the Bishop appoints Vicar-Generals for those remote Parts.

49.

The ARCHDEACON'S COURT, which hath no Power but what is derived from the Bishop, either by Prescription or Composition; having the same Jurisdiction as the Bishop's Court; but subject in Cases of Appeal to the Bishop. The Judge of this Court is the Archdeacon's Official; and if the Jurisdiction is large, the Archdeacon appoints Commissioners.

10. The

50.

THE COURT OF PECULIARS, ¹ belongs to a Pa- ¹ Wood's Inst. 504.
 rish or Church that hath an Ecclesiastical Juris-
 diction within itself, and is exempt from the Or-
 dinary, as the King's Chapel; which is a Royal
 Peculiar, and reserved to the immediate Govern-
 ment of the King himself; who has likewise other
 Ecclesiastical Peculiars, that formerly appertained
 to Monasteries and religious Houses. It is an an-
 tient Privilege of the See of *Canterbury*, that where-
 soever any Manors or Advowsons belong to it,
 they become exempt from the Ordinary, and are
 reputed Peculiars; and their Jurisdiction is annexed
 to the Court of Arches; the Judge whereof may
 issue Citations to these Peculiars.

51.

ECCLESIASTICAL PUNISHMENTS, are the Penal-
 ties of transgressing the Laws; and as Debts are
 discharged to private Persons by Payment; so
 Obligations, to the Publick for disturbing Society,
 are satisfied, when the Offender undergoes the
 Chastisement ordained for his Fault. The usual
 Punishments inflicted by the Ecclesiastical Courts,
 are EXCOMMUNICATION, PENANCE, SUSPENSION,
 DEPRIVATION, and DEGRADATION.

52.

EXCOMMUNICATION; which excludes a Person
 from the Communion of the Church, and Com-
 pany of the Faithful; an ¹ excommunicated Person ¹ 1 Inst. 134.
 being disabled to do any judicial Act, as to sue ⁴ Inst. 340.
 any Action at Law; be a Witness, or the like; ^{Wood's Inst. 508.}
 though he may be sued. But every Excommuni-
 cation doth not disable the excommunicated Per-
 son; for if a Mayor and Commonalty bring an
 F Action,

Action, the Excommunication of the Mayor doth not disable them ; because they sue and answer by Attorney. So if a Bishop is Defendant, an Excommunication by the Bishop doth not disable the Plaintiff ; and an Excommunication against an Appellant, while the Appeal is depending, is void.

53.

PENANCE ; which is an Acknowledgement of an Offence, by a Person's standing in some public Place barefooted and bareheaded, in a white Sheet, to satisfy the Church for the Scandal given.

54.

SUSPENSION ; whereby Ecclesiastical Persons are forbid to exercise their Office, or to take the Profits of it, or where they are prohibited for a certain Time in both of them.

55.

DEPRIVATION ; whereby an Ecclesiastical Person is deprived of his Preferment.

56.

* Celden's Titles
of Hon. 787.

DEGRADATION ; * whereby a Clergyman is divested of his Holy Orders ; and is either *Summary*, by Words only ; or, *Solemn*, by stripping the Party degraded, of those Ornaments, which are the Ensigns of his Order or Degree.

57.

† TEMPORAL LAWS maintain the Policy, public Peace, and Good of the Nation ; and is grounded upon the general Customs of the Realm, agreeable to the Law of God, and the Law of Nature ; determining all Causes concerning the ROYAL PRE-

† See Page 12, Paragraph 1.

ROGATIVE, the RIGHTS OF SUBJECTS, the LIBERTY OF SUBJECTS, DESCENT OF LAND, the NATURE OF ESTATES, the EXTENT OF ESTATES, the QUALIFICATION OF ESTATES, the MANNER OF CONVEYING ESTATES FROM ONE TO ANOTHER, the CEREMONY OF CONVEYING ESTATES, the FORM OF CONTRACTS, the SOLEMNITY OF CONTRACTS, the OBLIGATION OF CONTRACTS, the EXPOSITION OF DEEDS, the EXPOSITION OF ACTS OF PARLIAMENT, PROCESS, PROCEEDINGS, JUDGMENTS, EXECUTIONS, the BOUNDS AND LIMITS OF COURTS.

58.

The ROYAL PREROGATIVE ; which belongs to the King, who hath the highest Power in the Land ; and is '*Vicarius et Minister Dei in Terra, omnes quidem sub eo, et ipse sub nullo nisi tantum sub Deo* ; * Bract. Lib. 1. C. 3. defending every Man's Right, and hurting no one ; governing all Things in his Dominions ; yet possessing none but his own ; and he is said by some to be superior to the Law ; because the Life of the Law is in continual Dependance on him ; and therefore in Minority and under him. Some say the King is subject to the directive Power of the Law. How can that be ? When the Law has no such Power. For if it can only direct, it is not a Law ; a Law obliging, as well as directing. Indeed whatever the King promises, either at the Time of his Coronation or afterwards, he is bound to perform ; though the Obligation comes not from the Law, but from his Promise, Oath, Contract, Religion, Reputation and Interest. And as the People are subject to the King ; so is the King to God. He may not therefore command his Subjects to fight in an unjust Cause ; they not being bound to obey, when any Thing is commanded contrary to his Coronation Oath ; whereby he promises to govern the People of this Kingdom, according

cording to the Statutes in Parliament agreed on,
 and the Laws and Customs of the same; to cause
 Law and Justice in Mercy to be executed in all his
 Judgments; to maintain to the utmost of his
 Power, the Laws of God, the true Profession of
 the Gospel, and the Protestant reformed Religion,
 established by Law; and preserve to the Bishops
 and Clergy, their Rights and Privileges; as by
 Law are appertaining. Thus the King's Power is
 political as well as regal; otherwise he might
 change the Law, impose Taxes and other Hard-
 ships on the Subjects, whether they would or not;
 likewise every King for the Time being, hath a
 Right to the Peoples Allegiance; who are " bound
 to defend and assist him in his Wars, against every
 Power whatsoever. The King that hath Right, if
 out of Possession, is not within the Meaning of the
 Statute 11 Hen. VII. C. 1. though in the Case of
 King *Charles* the Second, who was kept out of the
 Exercise of the Kingly Office by Traitors and Re-
 bels, it was adjudged that he was King *de Facto* and
de Jure; and all the Acts for keeping him out,
 were declared to be High Treason. For when the
 Crown descends to the right Heir, he is King be-
 fore Coronation, and his Prerogatives contained in
 the 17th of *Edward* II. C. 1. are only those that
 concern his Coffers; there being divers Rights of
 Majesty peculiar to himself; as to make Peace ^x
 and War; ^y call, continue, prorogue and dissolve
 Parliaments and Provincial Councils; ^z determine
 Rewards and Punishments; moderate Laws; par-
 don Offenders; (except in Case of Murder, when
 Appeal is brought by the Subject; or ^a Felony,
 which is pardonable only where the King can law-
 fully do it, according to his Coronation Oath) lay
^b an Embargo on Ships; (which must be *pro Bono*
Publico, and not for the private Advantage of any
 particular Trader) dispose and ^c govern the Militia
 of

¶ 11 Hen. VII.

x 1 Inst. 110.
 165. 3 Inst.
 167. 2 Inst.
 743.

y Danv. 73.

z 2 Inst. 316.

a 14 Ed. III.

b 1 Salk. 32.

c 21 Jac. I.
 C. 3.

of the Nation; command all Forts and Places of Strength; give Order for making and casting of Ordnance, confer ^d Dignities and honourable ^d 1 Inst. 165. Titles; name, create, make and remove the great Officers of the Kingdom; make ^e Courts to proceed according to the Common Law; create ^f Universities, Colleges, Counties, Boroughs, Fairs, Markets and other Corporations; found ^g Churches, or licence others to found them, exempt from the Ordinary Jurisdiction. ^h Also the King may deny his Royal Assent to any Statute; though the Denial is not an expresse Negative; because he only says, that he *will advise upon it*. The ⁱ King has an Interest in every Subject, and a Right to his Service; but cannot discharge the Right of a Subject, or hinder him of any Remedy the Law gives him. The ^k King is *Custos totius Regni Angliæ*; ^k 12 Rep. 34. opening and shutting the Sea-Ports, as he sees Occasion: Yet ^l he cannot dispose of them to any Subject; but must appoint Officers for the Custody thereof under him. Likewise ^m all Writs, Process, Commissions, and other legal Proceedings are in his Name; and no ⁿ Forest, Chace or Park, can be made without his Leave. The ^o King may incorporate a whole City, Parish or other Place, or any Part of it; and grant and annex to such Corporations, divers Franchises; though they may not, under Colour thereof, set up a Monopoly. He ^p may also incorporate a Town, and enable them to choose Burgeses of Parliament. The ^q King hath the supreme Right of Patronage all over England; and is the Founder and Patron of all Bishopricks and other Benefices; so that none can be made Bishop without his Nomination. He hath the Tithes of Forests and Places Extra-Parochial; and can grant the same by Letters Patent, but pays no Tithes, though his Lessee does. The ^r King hath Power to naturalize an Alien, to grant Letters

^e 1 Jenk. Cent. 285.
^f 4 Inst. 294.

^g Wood's Inst. 18. 1 Cro. 511.

^h 1 Inst. 110, 165.

ⁱ 1 Salk. 79, 168. Holt Ch. Just.

^k 12 Rep. 34.
^l 11 Rep. 86.

^m Jenk. Cent. 285.

ⁿ 4 Inst. 294.

^o Godb. 253. Noy, 182.

^p Hob. 14.

^q Wood's Inst. 18. 1 Cro. 511.

^r Plowd. 314.

* 17 Ed. II. C.
 1. 9 Hen. III.
 4 Inst. 136.

* 1 Inst. 1.

* Finch 83.

x Yelv. 13.
 Plowd. 243.

7 4 Rep. 54.
 2 Inst. 186.
 1 Salk. 38.

* 2 And. 154.
 Style 263.

* Jenk. Cent.
 307.

b 11 Rep. 87.
 Dyer 52.

c 4 Rep. 35.
 Nels. Abr. 904.

ters of Safe-Conduct to foreign Parts; to set a Value upon Coin, made by his Authority, and make foreign Coin current by Proclamation. The Law also for the Increase of Money, gives him all Mines of Gold and Silver. He is ^a the General Guardian of Ideots, Lunaticks, and all others incapable of governing their Estates. He hath the Lands of Felons and other Convicts; and the Goods of Felons, Fugitives, Pirates and Wrecks. From ^t him, by Construction of Law, all Lands are originally derived. Wherefore all Estates by Forfeiture, or for Want of Heirs, return to him again. Likewise ^u Lands in his Possession, are free from Tenure; for he may not be Joint-Tenant with any. His Grant ^x binds his Successors, though not named; and is taken most strongly against a Stranger, and favourable for him: But ^y he cannot grant or take any Land (not cast upon him by Descent) except by Matter of Record; nor grant an Annuity to charge his Royal Person (which is not chargeable like that of a Subject) yet he may grant it out of the Revenues of the Excise or other Taxes. Nor can ^z he grant away an Estate-tail in the Crown; the Law taking Care to preserve the Inheritance belonging thereto, for the Benefit of the Successor. Yet ^a where he is Tenant in Tail of the Gift of his Ancestor, he may bar it by Fine. A Grant ^b may not be made by the King which tends to a Monopoly, against the Interest and Liberty of the Subject; nor can he make a Grant, *non Obstante* any Statute, made or to be made; for if he doth, any subsequent Statute, prohibiting what is granted, will be a Revocation thereof. And where ^c he is restrained by the Common Law from making a Grant, his making one, *Non Obstante* the Common Law, is void. Though when he may lawfully make a Grant, and the Law requires he should be apprized of what he grants, that

that he may not be deceived, a *Non Obstante* makes it good; yet a ^d Grant made without reciting a former one of the same Thing, that remains in Force, is void. Also the reciting a Void Grant, when there is another good Grant, produces the same Effect. ^e But there may be a *Non Obstante* to a former Grant, if the King is deceived any Way concerning it; because upon such Account, the Grant is void. Likewise his ^f Grants may be void for Uncertainty; as where Debts and Duties are granted, without saying in particular what Debts and Duties; though ^g where there is particular Certainty preceding, they shall not be destroyed by any Uncertainty or Mistake which follows. A ^h Grant to a Corporation, that they shall not be impleaded for Lands, nor for any Cause arising there, elsewhere than before themselves, doth not bind the King, where he is a Party; he not being able to exclude himself from prosecuting Pleas; as it concerns the publick Government. And ⁱ where the Title of the King, and a common Person concurs, the King shall be preferred. Nor can ^k any Distress be made upon the King's Possessions; but he may distrain out of his Fee, and take Distresses in the Highway. An ^l Heir shall pay the King's Debt, though he is not named in the Bond: And it shall be satisfied before that of a Subject; and until it is satisfied, he may protect the Debtor from being arrested; for which there is a Prerogative Writ; notwithstanding ^m which, Creditors may proceed to Judgment with a *Cessat Executio* till the King's Debt is paid. But ⁿ if the Creditor take out Execution, before it is paid, without giving Security to pay the same, the Execution may be seized to satisfy the Debt of the King. And when a ^o Defendant is taken by *Capias ad Satisfaciendum*, if a Prerogative Writ, tested a Day before the Return thereof, issues for the Debt of the King, he

^d Dyer 97.
Cro. Car. 143.

^e 5 Rep. 94.
Moor 293.

^f 12 Rep. 46.

^g 2 Mod. 195.

^h Kelw. 88.
Dyer 376.
Jenk. Cent.
190.

ⁱ 1 Inst. 130.

^k 2 Inst. 135.

^l 1 Inst. 130,
386.

^m 25 Ed. III.
C. 19.

ⁿ Godb. 290.
2 Nels. Abr.
1081, 1082.

^o Dyer 197.

shall be held in Execution, both for the King and
 the Subject. ^p Lands and other Effects of the
 King's Debtor may be sold, as well after his Death
 as in his Life Time, unless he had a *Quietus*, which
 discharges his Heir of the Debt. When the ^q
 King's Debtor purchases a Lease to him and his
 Wife, and dies, the Term in the Wife's Hands is
 liable to the Debt. But if a ^r Tenant in Tail be-
 comes indebted to the King (except it be by Judg-
 ment or other Specialty, originally due to him or
 his Use) and then dies, the Lands in the Hands of
 the Issue in Tail, shall not be extended. Nor shall
 the ^s King's Debt be levied on the Land, where the
 Goods of the Debtor are sufficient; neither shall
 Pledges be distrained, when the Principal is suffi-
 cient. But this must be made appear to the Sheriff,
 who is to levy it. And in whosoever's ^t Hands
 the Goods of the King come, their Lands are
 chargeable, and may be seized for the same; he
 not being bound by Sale of his Goods in open
 Market; and no ^u Prescription of Time running
 against him. Action ^x lies not against the King,
 but instead thereof, a Petition to him in the Court
 of Chancery; and it is lawful for any Subject to
 petition him for Redress, where he finds himself
 aggrieved by any Sentence or Judgment. There
 are ^y no Costs against the King. No Entry will
 bar him; and no Judgment is final against him,
 being with a *Salvo Jure Regis*. Yet in the Case of
 others, he may issue his Command to the Judges
 not to proceed, till he is advised, where his Title
 may be prejudiced. ^z The King's Title cannot be
 tried without a Warrant from him or the Attorney
 General. The ^a King may have such Process in
 his Suit, as no other Person can have in any Case.
 He may ^b plead several Matters without being
 double; and the Plaintiff shall answer them all.
 He ^c need not plead an Act of Parliament, as a
 Subject

p 27 Eliz. C. 3.

q 2 Roll. Abr.
157.r 7 Rep. 21,
22.

s 2 Inst. 19.

t 2 Inst. 713.

u 11 Rep. 14.

x 2 Inst. 187.
Hob. 220.y Litt. 178.
Finch 460.

z 2 Inst. 424.

a 1 Rep. 18.
Finch 476.b Bro. Den.
Pl. 57.

c 4 Rep. 75.

Subject is bound to do. He may ^d sue in what Court he pleases, and cannot be nonsuited, as he is supposed to be present in all his Courts. He is not bound to join in Demurrer or Evidence; and the Court may direct the Jury to find the Matter specially; and his ^e Testimony is of as high a Nature and Credit, as any Record. Whence it is, that in all original Writs or Precepts, sent out for the Dispatch of Justice, he useth no other Witnesses than himself. He cannot be a Minor, nor will the Law see in him any Defect, Negligence or Folly. All ^f Benefices, remaining in lapse for eighteen Months, devolve to the King. But ^g there is no Lapse against him, and Plenarty shall be no Bar against his Title. Flotsam, ^h Jetsam and Lagan belong to the King, when the Ship is lost, and the Owners of the Goods cannot be found; and he may ⁱ grant the same to any Persons; whereby they have the Right of taking them as well as the Lord Admiral. And a ^k Prerogative given generally to the King, descends with the Crown.

^d Finch 82.⁵ Rep. 104.^e 1 Inst. 41, 47.^f 2 Roll. Abr.

360. Hob. 30.

⁴ Rep. 17.^g 2 Inst. 273.

Dyer 351.

^h F. N. B. 122.ⁱ Lex Mercat.

149.

^k Raym. 212.

59.

The RIGHTS OF SUBJECTS, or those Things that are common to every one, who remains obedient to the Law of the Land: *viz.*

60.

¹ Every one has a Right to Air and Light in his own House; and if they be stopt up or darkened by Building; or, if any Thing of infectious Smell be laid near it, or other Damage done, they are Nuisances punishable by Law; but for ^m preventing a Prospect, which is only Matter of Delight, no Action will lie; though ⁿ one may com-

¹ 3 Inst. 237.² Danv. Abr.

173.

^m 11 Co. Rep.ⁿ 1 Salk. Rep.

360.

G

pel

pel another to repair his House in several Cases by
Writ *de Domo Reparanda*.

61.

• 2 Inst. 316.

p H. P. C. 137.

Plowd. 5.

5 Rep. 91.

q Co. Litt. 56.

Vent. Rep. 180.

r Yelv. 141.

Trin. 10 Car.

B. R. 1.

Danu. 712.

s Yelv. 142.

t 3 Salk. 182.

u 2 Roll.

Abr. 137.

° Every one's House is his Castle ; therefore if Thieves come, and the Owner or his Servants kill them, it is not Felony ; nor shall he forfeit any Thing ; nor shall the ° Doors of a House be broke open on Arrests, unless for some capital Crime. Every ° one may travel at their Pleasure in the King's Highway, which is a common Street, River, Bridge, Path or Road. And ° if a Highway, leading through a Field, is unfit for travelling through it, Travellers may go out of the Track-way, notwithstanding there is Corn sown ; or ° if there be a common Foot-Path, through a Close by Prescription, and the Owner of the Close ploughs up the Way and sows it, laying Thorns at the Side of it, Passengers may go over another Foot-way in the same Close, without being Trespassers. Or ° if a Highway is not sufficient, any Passenger, going over the Land, may break down the Inclosures of it, and justify it till a sufficient Way is made. And all ° Manner of Injuries to Highways, which render them less commodious to Travellers, are adjudged Nuisances.

62.

* 1 Mod. 105.

y 3 Jac. I. C. 6.

Any * one may fish where a River ebbs and flows, and is an Arm of the Sea ; for if Trespass is brought against a Person for fishing there, he may plead that the Place is *Brachium Maris, in quo Unusquisque subditus Domini Regis Habet et Habere debet Liberam Piscariam*. So in the Severn, the Soil belongs to the Owners of the Land on each Side, and the Soil of the River *Thames* is in the King, yet the Fish is common to all. ° Every one

one may freely hold Commerce with *France, Spain,* and other Places, except in Time of War, when the Nation is forbid to trade with those with whom we are at Enmity. Thus by 1 *William and Mary,* C. 34. all Trade with *France* was prohibited during the War. The same was done by, 13 *Geo.* C. 27. with regard to *Spain.* And the same hath been since done with regard to *France* and *Spain.* Likewise no Subject can trade without the King's special Licence to any Nation² of Infidels; because of the Danger of relinquishing Christianity.

² 3 Nelf. Abr. 331.

63.

Every Tradesman, or Artificer may take an Apprentice or Servant. And if ^a any Person entices an Apprentice or Servant to leave his Service, Action will lie against the Person doing it; and the Statute 12th *Ann.* relating to Servants stealing and purloining the Goods of their Masters, of the Value of Forty Shillings, which is Felony, does not extend to Apprentices under the Age of Fifteen: Though an ^b Apprentice or Servant may be indicted of Felony for stealing his Master's Goods at Common Law, notwithstanding the Statute 21 *Hen. VIII.*

^a 1 Salk. 380.
² Len. 62.
² 3 Ed. III.

^b 1 Hales Hist. P. C. 666.

64.

Every poor Person may claim a Settlement^c by Inheritance, Nativity, and Commorancy, or Residence. By Inheritance, as when he claims one, because his Father was there settled. By Nativity; as when the Father or Mother hath no legal Settlement, the Child regularly gains one in the Parish where born. And by Commorancy or Residence; as when a Person continues in any other Place, than that in which he was legally settled for the Space of Forty Days, such Continuance making a Settlement.

^c Bult. 351.

65.

d 38 Ed. III.
C. 9.

No ^d Person shall be vexed upon any Accusation, but according to the Law of the Land. Likewise Promoters of Suggestions, are to find Surety to pursue them; and not making them good, shall satisfy Damages to the Party accused, and pay a Fine to the King.

66.

e 2 Mod. Rep.
278.

No ^e Person is obliged to answer on Oath to a Matter, whereby he may accuse himself of any Crime.

67.

f Brownl. 18.

g 5 Rep. 64.
2 Nelf. Abr.
327.

No ^f Person can be falsely imprisoned, not even by the Command of the King. And ^g if a Person is imprisoned on any Bye-Law of a Corporation or Custom, it is false Imprisonment; because a Bye-Law to imprison is against *Magna Charta*.

68.

h F. N. B. 66.
New. Nat. B.
151, 152.]

Any ^h Person has a Right to a *Homine Replegiando*, upon Oath being made that one has secretly taken away, or keeps in his Custody, another against his Will, with a Petition to the Chancellor. And if the Sheriff returns, that the Defendant hath eloigned the Plaintiff's Body, so that he cannot deliver him; the Plaintiff shall have a Writ of *Capias in Withernam*, to take the Defendant's Body; and if this is returned *Non est inventus*, the Plaintiff shall have a *Capias* against the Defendant's Goods and Effects.

69.

i Wood's Inst.
361.

Any ⁱ Person may justify killing another in his own Defence; but not in protecting his Goods against

against one that would wrongfully take them away, unless he be a common Thief.

70.

Any ^k Woman may kill a Man for attempting to ravish her. H. P. C. 39.

71.

Every ^l one has the Equity of Redemption of ^l Lands, which he or his Ancestors has mortgaged, by paying the Principal and Interest due thereon; except they have suffered it to have been foreclosed according to Law. 1 Vern. 33, 190.

72.

Any ^m Landlord may within thirty Days follow Goods, fraudulently carried away, in order to prevent their being distrained; but if the Goods are sold *bona fide*, for a valuable Consideration to any Person, not privy to the Fraud, before Service, they cannot be distrained. 11 Geo. II. C. 19.

73.

ⁿ Every Person is entitled to replevy Cattle or Goods distrained for Rent-Service, Damage-Fee-fant, or any other Cause; upon giving Security to the Sheriff, that he will pursue his Action against the Party distraining, and return the Cattle or Goods, if the taking shall be adjudged lawful; ^o except against the King, or where he is Party, or the taking was in his Right. 1 Inst. 145, 268. Dyer 246. 3 Hen. VII.

74.

Any ^p Person may demand a Discharge on paying a Sum of Money, or Debt due. A general Release in full of all Demands, will discharge all Debts p Termes de la ley. 15 Dyer 6, 25, 51. 3 and 4 Ann. C. 16.

Debts that are not on Specialty, *i. e.* Bonds, Bills and other Instruments sealed and delivered; which can only be destroyed by some other Specialty of equal Force; such as a general Release, a Power of Revocation, or the like.

75.

1 Inst. 133.
2 Lill. Abr.
674.

Any ¹ Person may wage his Law; because the Defendant may pay the Plaintiff his Debt in private, or before Witnesses, who are dead. Therefore his Oath shall rather be accepted to acquit himself, than the Law will suffer him to be charged on the bare Allegation of the Plaintiff. The Manner of doing it is thus: The Defendant comes with six Compurgators with him into Court; and standing at the End of the Bar, towards the right Hand of the Judge, the Defendant is asked by the Secondary, Whether he will wage his Law. If he answers Yes, the Judge admonishes him to be well advised, and tells him the Danger of taking a false Oath. If he still insists, the Plaintiff is called thrice by the Cryer; and if he does not appear, he becomes nonsuited; and the Defendant is discharged. But if he appears, the Defendant repeats after the Secondary these Words. *Here this, ye Judges, that I A. B. do not owe to C. D. the Sum of ——— nor any Penny thereof, in Manner and Form as the said C. D. hath declared against me: So help me God.* Then the Compurgators swear they believe what the Defendant hath sworn is true. And if the Plaintiff does not appear, to hear the Defendant wage his Law, though he is nonsuited, he is not barr'd from bringing a new Action.

76.

1 Magna Charta,
9 Hen. III.
C. 29.
2 Inst. 156.

Every ¹ one has a Right to be tried by a Jury of his Peers or Equals. Also he ² may except either
to

to the Array, or whole Number impanelled, in Respect of Partiality, or to the Poll, which is when one or two are excepted against as not indifferent.

77.

The LIBERTY OF SUBJECTS, or those Privileges granted in *Magna Charta*; whereby the People of this Kingdom possess their antient Liberties without Impeachment; or the Advantages held by GRANT, PRESCRIPTION, and RIGHT; by Means whereof, Men receive some Benefit beyond the ordinary Subjects.

78.

GRANTS are ROYAL OR PRIVATE.

79.

ROYAL GRANTS or Franchises, may be divided into three Sorts, 1. POLITICAL. 2. RELATING TO A PARTICULAR PERSON. 3. LOCAL.

80.

POLITICAL, vested in a Number of Persons, as Corporations; whereof some are *Sole*; some *Aggregate*; some *Spiritual*; some *Temporal*, and some *Mixt*. *Sole*, when a single Person is Chief, as a Bishop; *Aggregate*, when consisting of many, as *Mayor and Commonalty*; *Dean and Chapter*. *Spiritual*, when consisting of Bishops, Deans and Archdeacons, Parsons and Vicars. *Temporal*, when of Mayor and Commonalty, Bailiff and Burgeffes. And *Mixt*, when composed of *Spiritual* and *Temporal*, as Heads of Colleges.

81.

RELATING TO " A PARTICULAR PERSON, as " Jenk. Cent. 138.
LETTERS PATENT and PARDONS.

82. LETTERS

82.

LETTERS PATENT ; which are not avoidable for nice and subtle Constructions ; for if a Patent may be taken to two Intents, and it is good as to one, and not as to the other, the Patent is valid.

83.

PARDONS are the Works of Mercy, whereby the King, either before or after Conviction, forgiveth some Crime or Punishment ² *Ex Gratia ejus*, or of Course. The first is that which the King, in some special Regard to the Person, or other Circumstance, gives by his absolute Prerogative or Power ; where, however, some Things are required for its Allowance by the common Law, and by Statute. And the other is that which he grants, as Law and Equity persuade, for a light Offence ; as where a Person is convicted of Homicide, casual and excusable. ³ Also Pardons are either *general*, by Act of Parliament, or Charter of the King ; or *particular*, at the Coronation, or other remarkable Time, when any Offence is committed. And the ² Difference between them is this : Wheresoever the Disability is Part of the Judgment by Act of Parliament, as in a Conviction of Perjury upon the Statute, the King's *special* Pardon cannot remove that Disability, though a general one may. But where the Disability is by Common Law, and only consequential to the Conviction, and no Part of the Judgment, the King's Pardon will take it away.

² S. P. C. 47.
H. P. C. 38.
West Lymb.
Par. 2. Sect.
46.

³ 2 Inst. 200.
3 Inst. 233.
H. P. C. 250.

² 2 Salk. 513.
3 Salk. 264.

84.

LOCAL, or concerning a particular Place, as a COUNTY, HUNDRED, CITY, TOWN, BOROUGH, FERRY, FOREST, CHASE, PARK, WARREN, MANOR.

85. A

A COUNTY; which contains a Circuit, or Portion of the Realm, for the more easy Administration of Justice. So that there is no Part of this Kingdom that lies not within some County, governed by a yearly Officer called a Sheriff; who hath a *Judicial* and *Ministerial* Power. His *Judicial* Power consists in hearing, trying and determining Causes in his County Court, and in preserving the Peace. For by Common Law, he is the principal Conservator of the Peace within his Jurisdiction. He is to assist the Justices, and raise the *Posse Comitatus* to preserve the Peace; for Breach whereof, or for making an Affray in his Presence, he may imprison the Transgressors, and such Persons as he shall apprehend on Suspicion of Felony. On a Hue and Cry, he shall commit to Gaol; but he may not of his own Authority, arrest any Man on Suspicion of Felony, unless there be a Felony actually committed, and he himself has a Suspicion of the Party. And his *Ministerial* Power consists in the Execution of Writs and Process out of the King's Courts; wherein he ought not to dispute the Validity of any Writ; but execute it. He cannot let a Person go at large, though taken on erroneous Process. In criminal Causes, or where the King is concerned, upon a Refusal to open the Door of a House, after his Officers have told the Cause of their coming, they may break it open to execute the Process: Though in Causes at the Suit of a Subject, the Sheriff should not break open the Door of a House, nor pull the Latch to open it, to take a Person. For if he does, though the Arrest is good, yet he may be punished for the Abuse of his Power. But

where

^a 1 Inst. 168,
174. 2 Inst.
193, 452.
² Roll. 257.
⁵ Rep. 64.

⁵ Cro. Jac.
289.
^c 5 Rep. 97.
Palm. 53.
Hob. 1.

where the outer Doors are open, he may proceed to break open inner Doors.

86.

d 3 Mod. 199.

A HUNDRED; which is a Subdivision of a County, containing ten Tithings, and governed by a Constable. Hundred is sometimes called *Lathe*, as in *Kent*; sometimes *Riding* and *Wapentake*, as in *Yorkshire*; sometimes *Rapes* as in *Sussex*; Though ^d now its Jurisdiction is devolved to the County Court; except some few that have been annexed to the Crown, or given to some great Subject, and still remain in the Nature of a Franchise.

87.

CITY; which is a Town incorporated, having a Bishop and Cathedral Church; called *Civitas*, *Oppidum*, and *Urbs*. *Civitas*, from the Multitude of *Citizens*; who observe their own Customs and Laws. *Oppidum*; because the Inhabitants are *able* to resist an Enemy; being fortified with Walls and Ditches. And *Urbs*; from the Number of Artificers that live in it.

88.

e Finch 80.

f 1 Inst. 115.

A TOWN; which is a ^e walled Place, not governed in the Manner of Boroughs; having, or ^f having had, a Church with Celebration of Sacraments, and other spiritual Ceremonies. It ought to have a Constable, or Tithing-Man; and though it be so decayed, that there is not any Houses remaining; yet it is a Town in Law.

89.

g Bracton lib. 3. tr. 2. C. 19.

A BOROUGH; which is a Corporation Town, sending Burgeſſes to Parliament; and ^g imagined to

to have been principally meant of a Tithing or Company, consisting of ten Families, who were bound and combined together as each others Pledges. It arises by Charter, Statute, Custom or Prescription. But notwithstanding they are said to be corporate, they are equally Boroughs, whether incorporate or not; there being a great Number not incorporated. The Cinque-Ports are those Havens that lie towards *France*; and therefore thought by our Kings to be such Places as ought to be vigilantly guarded, and preserved against Invasion; in which respect they have divers Privileges, and an especial Governor, called *Lord Warden of the Cinque-Ports*; which are *Dover, Sandwich, Rumney, Winchelsea and Hithe*. To these are added *Rye and Hastings*.

90.

A FERRY, or Boat that carries Men and Horses over a River for reasonable Toll. No ^h Action ^{h 5 Mod. Rep. 294.} will lie for being disturbed in the Passage, unless some particular Damage be alledged.

91.

A ⁱ FOREST, which is a certain Territory of ^{i Manw. Part 2.} woody Ground and Pasture, with great Coverts of ^{C. 4.} Vert, (that is, every Thing that beareth a green Leaf within a Forest) appointed as a Habitation for Harts, Hinds, Boars, Wolves, and Beasts and Fowls of the Chace and Warren; which are protected by certain Privileges and Laws, contained in the ^k Charter of Forests, granted by King *John*, in the Year 1215. ^{k Mat. Paris 250.} The Season for hunting the Hart, begins at the Feast of *St. John the Baptist*, and ends at *Holy Rood* or *Holy Cross*; for hunting the Hind, at *Holy Rood*, and lasts till *Candlemas*; and for hunting the Boar and Wolf, from *Christmas* to *Candlemas*.

22 and 23
ar. II. C. 25.
3 Hen. VIII.
C. 6.

m Manw. for-
Law. Par. 2.
C. 20.

n 4 Inst. 303.

o Jones Rep.
278.

dlemas. Persons ^l qualified to hunt, are such as have a free Warren; as Lords of Manors, or have One Hundred Pounds *per Annum* Inheritance, or One Hundred and Fifty Pounds *per Annum* for Life, or by Lease for Ninety-nine Years; and the eldest Sons of Esquires, or Persons of higher Degree: And Persons so qualified may take Guns from those that are not, and break them. And the ^m Purlieu of a Forest, is all the Ground which hath been severed from it; so that it became purlieu or pure and free from the Laws of the Forest. Owners of ⁿ Grounds disafforest'd, may fell Timber; convert Pasture into Arable; inclose them in what Manner he pleases; erect Edifices, and dispose of the same, as if they had never been afforested. And a purlieu Man may hunt in the Purlieu, and keep his Dogs there unexpeditated, or without having the Balls of their fore Feet cut out. And the wild Beasts belong to him *ratione Soli*, as long as they remain in his Ground, and he may kill them; ^o though in the Case of Sir Richard Weston, it was said, that there was no Purlieu in Law to hunt; that it cannot be by Prescription; and that there is not any Thing in Statutes about hunting. Therefore Purlieu-Men may only keep out the Deer, but cannot kill them though they be in their Ground.

92.

p Manw. Part 1.
P. 341.

q 1 Inst. 233.

r 4 Inst. 314.

s 1 Inst. 233.
Cro. Car. 59, 60.

A ^p CHACE; which is a great Quantity of woody Ground, lying open, privileged for Bucks, Does, Foxes, Martens, and Roes; ^q but in a legal Sense, for all Beasts of the Forest. ^r It is less than a Forest, and not endowed with so many Liberties, nor guided by the Forest Law, but by the Common Law. ^s A Park is a large Quantity of Ground, privileged for wild Beasts of the Forest and Chase, consisting of Vert, Venison, and Inclosure; for if

it

it is determined in any of them, it is a total dis-
parking.

93.

A WARREN; ¹ which is a Place privileged for keeping of Hares, Conies, Pheasants, and Partridges; ² and may lie open; there being no Necessity of inclosing it, as there is of inclosing a Park.

¹ Manw. Part 2.
Co: Litt. 233.

² 4 Inst. 318.

94.

A * MANOR; which consists of Demesnes, Services and a Court-Baron, from Time immemorial; because a Manor cannot be without a Court-Baron, and a Court-Baron cannot now be made.

^x 1 Inst. 58,
^{108.}

95.

PRIVATE GRANTS, [See P. 47. N^o 78.] are those which one Subject gives to another, by transferring over his Right in the Thing granted to the Grantee. And in every ^y Grant of this Nature, it is requisite that the Grantor hath sufficient Power to grant; that the Grantee is capable of accepting it; that the Thing given is grantable; that it is granted in the Manner the Law requires; that the Grantee consents to accept thereof; and that there be Attornment where needful.

^y 1 Inst. 7.

96.

PREScription is acquired by Use and Time; [See P. 47. No. 77.] and ^z must always be alledged in the Person of him or them that prescribe; as having been *ultra memoriam Hominis*: Though it is not the Length of Time that begets the Right, but the Presumption of the Law; which supposes that a Possession cannot continue so long quiet and undisturbed, if it was against Right, or injurious to another.

^z 2 Salk. 278.

^a 2 Mod. 318.
⁴ Rep. 31.
^b 2 Inst. 167.
 Lutw. 381.
 Raym. 232.
 Cro. Car. 432.
⁷ Rep. 28.
² Roll. Abr.
 264.

^c 1 Inst. 113.
 Wood's Inst.
 297.

^d 1 Mod. 74.
³ Mod. 250.

another. ^a Yet it cannot make a Title to Land, but only to the Profit thereof. Nor can a ^b Person prescribe against the King, where he hath a certain Estate and Interest; nor against the public Good, Religion, or an Act of Parliament; nor can one Prescription be pleaded against another, unless the first is answered or traversed; or where one may stand with the other. And ^c where a Person prescribes to a Thing in Grant, it must be in himself and his Ancestors, whose Heir he is by Descent; and not in himself and those whose Estate he hath, unless the *Que Estate* be but a Conveyance to the Estate in Prescription; for he cannot have their Estate that lies in Grant without Deed, which ought to be shewn to the Court. Prescription ^d may be in several Persons, if relating to Matters of Easement, but not of Profit or Interest. For then the Tithes of one Person doth not concern another. And therefore several Men, having several Estates, cannot join in making a Prescription. A Title may be made by Prescription to a CHASE, PARK, WARREN, COMMON, FAIR, MARKET, TOLL, CHIMIN, WATER, FERRY, FRANCHISE, COURT-LEET, RENT, WAIFS, ESTRAY, DEODANDS, TREASURE-TROVE, WRECK, ADVOWSON.

97.

A CHASE; which differs from a Forest in this, that it may be in the Hands of a Subject, which a Forest in its proper and true Nature cannot. *Crompton* in his Jurisdictions, Folio 148, says a Forest cannot be in the Hands of a Subject; but it forthwith loseth its Name and becomes a Chase; and in Folio 197, he declares that a Subject may be Lord and Owner of a Forest. These Sentences seem to contradict each other; yet both are in some Respect true; for the ^e King may give or alienate a Forest to a Subject, and when vested in the Subject,

^e Manwood,
 Part 2. C. 3, 4.

ject, the Property of a Forest is gone; because the Courts forthwith vanish; none being able to make a Lord Chief Justice in *Eyre* of the Forest, but the King; though it may be granted in so large a Manner, that there may be Attachment, Swainmote, and a Court, equivalent to Justice-Seat.

98.

' PARK; which differs from a Chase, in that it must be inclosed, and may not lie open; for if it does, it is good Cause of Seizure into the King's Hands, as a free Chase may be, if inclosed. Besides, the Owner cannot have an Action against such as hunt in his Park, if it lies open.

^f Manw. forest
Laws. Crompt.
Jurisd. 148.

99.

WARREN; in which if any Person offend, he is punishable by the Common Law, and by Statute, 21 *Ed.* III.

100.

COMMON, which is that Profit a Man lawfully claims from the Land or Property of another, as Common of Pasture; or the Right a Person hath of putting Cattle to feed into Ground that is not his own. Common is divided into four Sorts.

The first is ^a Common in *Gross*, or the Liberty to have Common *alone*, without any Lands or Tenements; and ^b he that hath it, may put in a Stranger's Cattle, and use it therewith. The second ^c is *Common appendant*; which belongs to a Man's arable Land, not to a House, Meadow or Pasture. But if in the Beginning, Land be arable, and of late a House hath been built on some Part thereof; and some Acres employed in Meadow and Pasture; in such Case it is Common Appendant; ^k which according to Sir *Edward Coke*, had this Beginning.

^g F. N. B. 22,
37. 4 Rep. 30.

^h 1 Danv. 803.

ⁱ 1 Nelf. Abr.

457.

^k F. N. B. 180.
4 Rep. 37.

When

When a Lord enfeoffed another of arable Land, to hold of him in Socage, the Feoffee to maintain the Service of the Plough had at first, by the Permission of the Lord, Common in his Wastes, for necessary Beasts to till and manure the Ground. And that for two Causes; one, for that it was tacitly implied in the Feoffment; because the Feoffee could not till or manure his Land without Cattle; and Cattle could not be sustained without Pasture. So by Consequence the Feoffee had, as a Thing necessary and incident, common in the Wastes and Lands of the Lord. The other Cause was, for the Maintainance and Advantage of Tillage; which is much regarded and favoured by the Law. The third¹ Kind of Common, is Common Appurtenant; which belongs to an Estate for all Manner of Beasts commonable, or not commonable. And the^m Prescription for this Common, is, that the Beast must be *Levant and Couchant*; and the Reason is, because by this Prescription, the Party only claims some Part of the Pasture, and the Quantity is ascertained by the Levancy and Couchancy; the rest being left for the Owner of the Soil. And therefore if he, who thus prescribes, should put in more Cattle than are *Levant and Couchant* on his Tenement, he is a Trespasser. And the fourth Commonⁿ is Common *pur Cause de Vicinage*, or Common by Reason of Neighbourhood, which is a Liberty that the Tenants of one Lord in one Town, have to common with the Tenants of another Lord in another Town; or where the Tenants of two Lords have, Time out of Mind, commoned promiscuously in both Lordships, lying together and open to one another. Those^o that challenge this Kind of Common, which is usually called *Intercommoning*, may not put their Cattle into the Common of the other; but they may turn them into their own Fields; and if they stray into the neighbouring

¹ 4 Rep. 34.
Plowd. 161.

^m Noy 145.
² Saund. 324.

ⁿ 3 Rep. 78.

• Termes de la
Ley, 146.

neighbouring Common, they must be suffered; though the Inhabitants of one Town or Lordship, may not put in as many Beasts as they will, without regarding the Freehold of the Inhabitants of the other; otherwise it is no good Neighbourhood; upon which all this depends. And if one ^p Lord ^{p 7 Rep. 5.} incloses the Common, the Vicinage is gone. But ^{4 Rep. 30.} common Appendant remains. *Common of Estovers*, is the Right of taking Wood for *House-bote*, *Plough-bote*, and *Hay-bote*. Plough-bote is twofold ^{q 1 Co. Litt. 41.} *Estoverium Edificandi*, and *Estoverium Ardendi*. Plough-bote, *Estoverium Arandi*, for repairing Ploughs, Carts and Harrows, and making Rakes, Forks, and other Implements of Agriculture; and Hay-bote, *Estoverium Claudendi*, or the Liberty to take Thorns and other Wood, to make and repair Hedges, Gates, Fences, and the like. *Common of Piscary*, is the Liberty of Fishing; but to exclude the Owner of the Soil is contrary to ^{r 1 Inst. 123,} Law; though a Person may have a separate Right ^{164. 5 Rep. 34.} of Fishing. And the Owner of the Soil is excluded; for a Man may grant Water without passing the Soil, or *separalem Piscariam*, which is neither the Soil nor Water, but only a Right of Fishing. ^{s 1 Inst. 4.} *Common of Turbary* is a Licence to dig ^{4 Rep. 37.} Turf; and is an Appendant or Appurtenant to an House, and not to Land; and it may be in gross, but cannot exclude the Owner of the Soil. There is likewise common Liberty to dig Coal, Gravel, Sand and other Things. Also a ^{t Hill 42. Eliz.} Man may have Common for his Cattle in the King's Highway; although the Soil belongs to another; and ^{u 1 Danv. 795.} the Lord of a Manor may agist the Cattle of a Stranger in a Common, or licence him to put in his Cattle, if he leaves sufficient Room for the Commoners: Or the ^{x F. N. B. 125;} Lord may surcharge an Overplus of the Common; and if, where there is no Overplus, the Lord surcharges the Common, the

Commoners are not to distrain his Beasts, but must commence an Action against him. By the Statute of the 20th *Hen. III. C. 4.* Lords may approve or inclose against their Tenants; whereby Neighbours will be bound. ^y And if he leaves not Common sufficient, the Commoners may not only break down the Inclosures, but put in their Cattle. Although the Lord ploughs and sows the Land; ^z yet if he or any other, upon a just Title of Improvement, makes a Hedge or Ditch for that Purpose, which is thrown down in the Night by Persons unknown, the Towns adjoining may be distrained to make it good upon a *Noctantur* Returned; and in all ^a Cases of Common *Consuetudo loci est Observanda.*

^y 2 Inst. 88.
1 Roll. Abr.
406.

^z 13 Edward I.
C. 46. 2 Inst.
474.

^a 7 Rep. 5.

101.

FAIR; which derives its Name from *Nundinae*, or *ex Nono Die*; because formerly at the Celebration thereof, the People remained eight Days in the Fields, and on the ninth, returned to their Habitations, in order to carry on Business in the usual Manner. ^b It is generally kept once or twice in the Year; and by the Statute 2 *Ed. III. C. 15.* Fairs are not to be kept longer than the limited Time by the Lord thereof, on Pain of their being seized into the King's Hands, until such Lords have paid a Fine for their Offence. And Proclamation is to be made how long Fairs are to continue; and any ^c Citizen of *London*, may carry his Goods and Merchandize to any Fair or Market in *England*; notwithstanding the Ordinance made by the Lord Mayor, Aldermen and Citizens, That no Citizen should go to any Fair or Market out of the said City.

^b 2 Inst. 221.

^c 3 Hen. VII.
C. 9.

102.

^a MARKET; whereby Subjects are enabled to ^d Brañ. Lib. 2. set up and open Shops, or Stalls at a certain Place, ^{C. 24. 1 Inst. 220.} for buying and selling Necessaries; usually kept once or twice a Week; but ^e none must be held ^e Cit. Lib. 101. out of the City of *London* within seven Miles of it; and all ^f Contracts for any Thing vendible in Mar- ^f 5 Rep. 83. kets or Fairs are binding; and Sales alter the Property, if made according to the following Rules. First, the Sale must be in an open and proper Place for such Goods; so that any one, passing by, may see it. Secondly, it must be an actual Sale for a valuable Consideration. Thirdly, the Buyer must be a Person able to make a Contract. Fourthly, the Sale must not be fraudulent betwixt two, to bar a third Person of his Right. Fifthly, Toll ought to be paid, where required by Statute, &c. and, Sixthly, the Sale ought not to be in the Night, but between Sun rise and set, though nocturnal Sales may bind the Parties.

103.

TOLL is ^g properly a Duty in Towns, Markets ^g 2 Inst. 220. and Fairs, for Goods and Cattle bought and sold within the same.

104.

CHIMIN, or private Way; whereby one or more hath Liberty to pass through the Ground of another; either by ^h *Chimin in Gross*; which is held ^b Kitch. 117. principally and solely in itself; or by *Chimin Appen-* ^{Co. Litt. 56.} *dant*; which is claimed as Appurtenant to some other Thing. As if a Man rent a Close or Pasture, with Covenant for Ingress and Egress, through some other Ground, in which otherwise he might not pass.

105.

¹ Burnet's Theo.
Ear. Vol. 1.
P. 75.

¹ WATER, which is an Element composed of un-volatile Particles; groffer and of a more languid Motion than the Air: Yet separated from the Earth by reason of its liquid, and less gravitating Quality.

106.

² Roll. 140.
¹ Mod. 69.

FERRY, which is a Liberty to have a Boat for Passage upon a River, for Carriage of Horses and Men for reasonable Toll; and ^k if another obtains one near it, to the Prejudice of the first, Action will lie.

107.

¹ Poph. 180.
¹ Bulst. 54.

FRANCHISE; which is a Royal Privilege in the Hands of a Subject: But ¹ if a Person claims a Franchise, which he ought not to have, it is an Usurpation upon the King; and not shewing his Title, the King shall take from him his Franchise.

108.

OFFICE; which is a Function, by Virtue whereof, a Man hath some Employment in the Affairs of another; and by the 12th R. II. C. 2. no Officer or Minister of the King, shall be ordained for any Gift, Favour or Affection, nor put into Office, unless sufficient: A Law, says Sir *Edward Coke*, worthy to be written in Letters of Gold, but more worthy to be put into Execution; for certainly Justice will never be duly administered, but when the Officers and Ministers of Justice are of such Qualities, and come to their Places in such Manner, as by Law is required.

109.

^m 8 Ed. II.
4 Inst. 261.

^m COURT-LEET; which is accounted the King's Court; because the Authority thereof to punish Offences,

Offences, originally belonged to the Crown; and was thence derived to inferior Persons.

110.

^a RENT, or that Sum of Money, or Consideration issuing yearly out of Lands or Tenements, commonly divided into ^o *Rent-Service*, *Rent-Charge*, and *Rent-Seck*. *Rent-Service* is some corporal Service, as Homage and Fealty. ^p *Rent-Charge* is when a Person by Deed makes over his Estate to another in Fee, or by Gift in Tail, Remainder in Fee, or a Lease for Life, Remainder over in Fee, or any other Grant, where the whole Estate passeth; and a Rent, distrainable upon Non-Payment at a certain Time, is reserved to the Granter and his Heirs. It is called a *Rent-Charge*; because the Land is charged with such Distress by force of the Deed; and not by the Common Law; as in the Case of a *Rent-Service*. And ^q *Rent-Seck*, or Day-Rent, is where a Man by Deed passeth his Estate to another, and reserves to himself and his Heirs, a certain Rent without any Clause of Distress in the Deed; whereby a Person had no Remedy at Common Law till the 4th Geo. II. C. 28. enabled any Person to bring Assise of *Novel Disseisin*.

^a 1 Inst. 141.

^o 1 Inst. 87, 141,

142. Litt. 213.

² Lev. 80.

^p Litt. 217, 218.

¹ Inst. 143, 144,

147.

^q Litt. 217,

233, 235.

111.

^r WAIFS; which are Goods stolen and waved, or left by a Felon that is pursued for fear of being apprehended.

^r Kitch. 81.

112.

^s ESTRAYS; which are Beasts that are not wild, found within a Lordship, and not owned by any Person; which if proclaimed according to Law, in the two next Market-Towns, on two Market-Days,

^s Brit. C. 17.

Days, and if not claimed by the Owner within a Year and a Day, belong to the Lord of the Liberty. Swans ^t may be Estrays as well as Beasts, and are to be proclaimed in the same Manner. ^u Estrays are not to be used in any Manner within the Year and a Day, except in Case of Necessity, as to milk a Cow, or the like; but not to ride a Horse; and those of the Forest are mentioned in 27 Hen. VIII. C. 7. but the King's Cattle cannot be Estrays or forfeited.

^t 1 Roll. Abr.
378.
^u Cro. Jac. 148.
¹ Roll. Abr.
673.

113.

^x DEODANDS; which are Things given as it were to God to appease his Wrath; where a Person comes to a violent Death by mischance. They ought to be sold, and the Money arising thereby, distributed to the Poor. The ^y Original of them is said to come from the Notion of Purgatory; for when a Person came to a sudden and untimely Death, without having Time to be *Sbrieved* or Confessed by a Priest, and to have the Extreme Unction administered to him, the Thing which had been the Occasion of his Death became Deodand, that is, given to the Church to be distributed in Charity, and to pray the Soul of such deceased Person out of Purgatory. Therefore ^z if a Person by any Accident dies within a Year and a Day, the Thing that did it is Deodand; as when a Horse strikes a Man, and afterwards the Owner sells him, and the Party struck, dies of the Stroke, the Horse, notwithstanding the Sale, is forfeited.

^x 3 Inst. 57.
⁵ Rep. 110.
¹ Nels. 636.

^y 1 Lill. Abr.
443.

^z Plow. 260.
⁵ Rep. 110.

114.

^a TREASURE-TROVE; which is any Money, or other valuable Thing of Gold or Silver found hid in the Earth, but not lying upon the Ground; and no Person knows to whom it belongs.

^a Bract. Lib. 3.
³ Inst. 132.
Kitch. 80.
Brit. C. 17.
S. P. C. 25.

115. WRECK,

115.

^b WRECK, or those Goods which are after a ^{b 2} *Inst.* 167. Ship-wreck cast upon the Land by the Sea, and left there. For they are not Wrecks so long as they remain at Sea, in the Jurisdiction of the Admiralty; ^c and when any living Creature escapes out of a ^{c 3} *Ed. I. C. 4.* Ship cast away, whereby the Owner of the Ship or ² *Inst.* 167. Goods may be known, they are not a Wreck, but ⁵ *Rep.* 106. the same shall be kept a Year and a Day by the *Wood's Inst.* Sheriff of the County where cast on Shore, to be ^{214.} restored to any Person who can prove a Property thereto. And if not claimed within that Time, they are forfeited as Wreck. The Year and Day commences from the Seizure; and if the Owner dies within the Year, his Executors or Administrators may prove the Property. But if the Goods are *Bona Peritura*, and will not endure for the Year and Day, the Sheriff shall sell them to the best Advantage, and deliver the Money received, to the Proprietor.

116.

^a ADVOWSON, or Presentation to a Benefice; and ^{a 1} *Nelf. Abr.* he that hath this Right is styled *Patron*; because ^{184.} they that originally obtained the Right of Presentation to any Church, were Maintainers of, or Benefactors to, the same Church. For when the Christian Religion was first established in *England*, Kings began to build Churches, and to make Bishops; and afterwards several Lords of Manors, in Imitation of them, founded particular Churches on some Part of their Lands, and endowed them with Glebe; reserving to themselves and their Heirs, a Right to present a fit Person to the Bishop, when the same should become void. By this Means the Founder of a Church obtained the

Name of Patron, and his Right of Presentation was called *Advowson*; it being presumed that he who founded a Church, would *avow* and take it into his Protection; and prove a Patron by defending it in its just Rights.

RIGHT; [See P. 47. No. 77.] whereby a Person enjoys a particular Privilege; because it is allowed to all who are of his Employment, Rank, Degree or Place of Abode. * As a Person by being a Peer of the Realm, or an Ambassador, is exempt from Arrests; so is a Person who is a Servant to the King, a Peer of the Realm or an Ambassador. A Member of Parliament, or of the Convocation, hath the same Privilege in Time of Parliament, and for certain Days before and after. So hath a Person, who is their Servant. The Lord Mayor of *London* is privileged from all Actions; that there may not be a Hindrance in the Government of the City. A Person by being an Alderman of *London*, is exempted from serving certain Offices. A Person being in the Courts at *Westminster*, or going and coming from thence about the Business of the Court, is exempt from Arrests; and a Person living within the Verge of the Palace, Bounds of the Fleet, Universities, Counties Palatine, Cinque Ports, or other privileged Places, may claim the Privileges thereof. Also a Person being admitted an ^f Attorney, claims their Privileges, as to sue and be sued in the Courts at *Westminster*, where they practise; not to put in special Bail in all Cases; nor ^g be chosen into Offices against their Will. And though they do not practise, they have the same Privileges, as long as they remain on Record. Likewise ^h any Person who is an Officer in a Court of Justice, may claim the

* Cowel. 2 Roll.
Abr. 272.
Finch 321.
Raym. 152.
2 Lill. Abr. 370.
Cro. Car. 585.
4 Inst. 212.
Crompt.
Jurisd. 137.

^f Vern. 299.
Wood's Inst.
450.

^g Lutw. 1667.

^h Lill. Abr. 368.

the Privilege of the Court. A ¹ Person, who is ^{1 32 Hen. VIII.} an Apothecary, is exempted from serving Parish-^{6 W. and M.} Offices; and a Person being naturalized, claims ^{C. 4.} the same Privileges as a Native; but till then, an Alien is not particularly under the King's Protection to have the Benefit of the Law.

118.

DESCENT OF LAND, [See P. 34. No. 57.] or the Order and Means, whereby Lands and Tenements go from Ancestor to Heir, is either

119.

^k By COMMON LAW, CUSTOM, OR STATUTE: ^{k 1 Inst. 13,} By COMMON LAW, where a Man having an Estate ^{237.} of Inheritance in Fee Simple, dieth without disposing thereof; by which Means, it goes to the eldest Son and Heir of course; being cast upon him by the Law.

120.

By ¹ CUSTOM; which gives an Estate in Fee Simple, sometimes to all the Sons or Brothers, when one Brother dieth without Issue, as *Gavelkind*: Sometimes to the youngest Sons, as *Borough-Englisch*; and sometimes to the eldest Daughter or youngest, according to the Custom of particular Places. ^{1 1 Inst. 110, 120, 175. Litt. 210, 211.}

121.

By ^m STATUTE; whereby a Fee-Tail descends ^{m 13 Ed. I. C. 1.} in a particular Manner. Likewise ⁿ Lands and ^{n 1 Inst. 10, 11.} Tenements descend in a *lineal*, or *collateral* Line. The *Lineal* does first inherit, and is downwards in a right Line from the Grandfather to the Father; from the Father to the Son; from the Son to the Grandson; and so on successively. The *Collateral* is also downwards; but springeth out of the Side of
K the

• Lord Bacon's
Elem.

P 1 Inst. 24.

9 Litt. 3.
3 Rep. 10.
Vaugh. 244.

the whole Blood, as another Branch thereof. Such as the Grandfather's Brothers; the Father's Brothers; the Son's Brothers, and so on. Thus ° Estates in Fee-Simple descend: First, to the eldest Son, as Heir to his Issue; the Sons first in Order of Birth, and for Want of Sons, to the Daughters equally; who inherit as one Heir. But if the eldest Son hath no Issue, then to his next eldest Brother of the whole Blood, and his Heirs; and for want of a Brother, to his Sister or Sisters of the whole Blood, and their Issue. If there be no Brother or Sister, to the Uncle and his Issue; and for want of an Uncle, to an Aunt or Aunts, and their Issue. If there be none such, then to the Cousin in the nearest Degree of Consanguinity. And there is a^p Maxim in Law, that where Lands descend on the Part of the Father, the Heirs of the Mother shall never inherit; and when on the Part of the Mother, the Heirs of the Father shall never inherit. And though^a Inheritances descend, they cannot ascend; for the Father can never come to the Lands which his Son hath purchased by lineal Ascent; but he may by collateral Ascent. As where the Son's Lands come to his Uncle, and then to the Father; the Uncle being Heir to the Nephew in the collateral Line, as the Nephew is to the Uncle.

122.

THE NATURE OF ESTATES, or Difference and Variation of the Species of Estate; for as the Word *Estate*, signifies a real or personal Interest, either by Descent or Purchase; so the Word *Nature* defines the Manner in which that Interest doth commence. As Estates are in ABEYANCE, TRUST, COPARCENARY, JOINT-TENANCY, TENANCY IN COMMON, and TENURE.

123. ABEYANCE,

123.

* **ABEYANCE**, or Expectation, Remembrance * Co. Litt. 342. and Intendment of the Law; for by a Principle of Law, there must be a Fee-Simple in Somebody; or it is in Abeyance, that is, though for the present it is in no one; yet it is in Expectancy, belonging to him who is next to enjoy it. * Thus a Patron * Termes de la Ley, 6. having presented one to a Living, the Fee of the Lands and Tenements pertaining to the Rectory, is in the Parson; but when the Parson dies, and the Church becomes void, then the Fee is in Abeyance till another Person is inducted; for the Patron hath only the Right to present; the Fee being in the Incumbent that is presented.

124.

* **TRUST**; which is a Confidence one Man reposes in another; and if a Person in whom a Trust is reposed, break or do not perform the same, the Remedy is by Bill in Chancery; the Common Law generally taking no Notice of Trusts. And the * Person to whom the Use is made, hath the Profits; and the Tenant or Trustee must make an Estate as he shall direct; the Possession being given to him by the 27th of Hen. VIII. C. 10. and it is set down in the *Habendum*, to whose Use Lands are conveyed; because whatsoever Estate a Man has in the Use, the same he has in Possession. But the *Cestuique Use* hath neither *Jus in Re*, nor *ad Rem*; his only Remedy being in Chancery to compel the *Cestuique Trust* to execute the Use. By the Statute 29 Car. II. C. 3. Declarations and Creations of Trusts concerning Lands, Tenements, or Hereditaments, are to be in Writing, signed by the Party impowered to declare such Trust. And it is provided, that this shall not extend to resulting Trusts,

* 2 Lill. Abr.

624.

u 3 Nelf. Abr.

487. 1 Inst. 272.

1 Rep. 121.

2 Leon. C. 25.

or Trusts arising by Implication or Construction of Law; which shall remain and be of like Force as before that Act. Trusts by ^x Operation of Law, are either where the Deed or Conveyance hath been taken in the Name of one Man, and the Purchase-Money paid by another; or where the Owner of an Estate hath made a voluntary Conveyance of it, and declared the Trust, with regard to one Part, to be for another Person, but hath been silent as to the other Part: In which Case, he himself ought to have the Benefit of that, it being plainly his Intent.

^x Barnardis
388.

125.

^y COPARCENARY, is an Estate that descends in equal Portions to two or more Issue Male; who, for Default of Heirs Male, come to the Lands of their Ancestor. They ^z are to make Partition; which ought to be at full Age; but the ^a Crown is not subject to Coparcenary, nor is there any in Dignities.

^y Brañ. Lib. 2.
C. 30.

^z Litt. 243.
¹ Inst. 173.
¹ Rep 87.
³ Co. Litt. 27.
²⁵ Hen. VIII.
C. 22.

126.

^b JOINT-TENANCY, is an Estate held by two or more Persons, claiming under one Title; and the Difference between this and Coparcenary, is, that a Joint-Tenancy is taken by Purchase only; whereas Coparcenary Estates are always by Descent. Joint-Tenants must jointly plead, and be jointly sued; which Property is common to them and Coparceners. Joint-Tenants have a sole and peculiar Right to Survivorship, which Coparceners have not. For if there be two or more Joint-Tenants, and one dies having Issue, the other or rest shall have the Share belonging to the Deceased, and not the Issue. ^c But the King cannot be Joint-Tenant with any Person; because none can be equal with him:

^b Litt. 277, 280.
¹ Inst. 180.

^c 1 Inst.
¹ Finch 83.

Nor

Nor^d can a Corporation be jointly seised of any^d 2 Lev. 12.
Estate with another.

127.

^e TENANCY IN COMMON, is held for Life or^e 1 Inst. 133.
Years by several Titles, or by one Title and several
Rights. And as Joint-Tenants have one Joint-
Freehold; so Tenants in Common have different
Freeholds. One^f Tenant in Common cannot^f 2 Leon. 307.
bring Action of Trespass against another: Though² Litt. Abr.
one Tenant may bring Waste against his Partner.
The^g Heirs and Executors of Tenants in Common,
shall have their Parts or Shares, and not the Sur-
vivors, as in Case of Joint-Tenancy. And^h by^h 1 Salk. 399.
Holt Ch. Justice, the Words, *Equally to be divided*,
do not make a Tenancy in Common, but a Joint-
Tenancy, though they might in a Will. Yet if a
Conveyance is made to two Persons; *Habendum* to
one and his Heirs, and the other Moiety to the
other and his Heirs, it is a Tenancy in Common.
Andⁱ when there are two Joint-Tenants, and oneⁱ Litt. 292, 319.
alienates his Part, the Alienee and the other Joint-
Tenant, are Tenants in Common; for they claim^{321.}
by several Titles. Also^k Tenants in Common and^k 31 Hen. VIII.
Joint-Tenants, are to make Partition, as Copar-
cenors; and if for Life or Years, they may be^{C. 1.}
compelled to do the same by Writ *de Partitione*
Facienda.<sup>32 Hen. VIII.
C. 32.
8 and 9 W. III.
C. 31.</sup>

128.

^l TENURE is the Service which the Tenant owes^l 1 Inst. 1, 93.
to his Lord for Land holden of him. It is^m me-^m 2 Inst. 531.
diately or immediately of the King, who is *Summus*
Dominus Supra Omnes in *Ancient Demesne*, *Frank Fee*,
or *Free Socage*.ⁿ Ancient Demesne concern theⁿ Kitch. 98.
Crown Lands alone; for by it those Manors are
held that appear to be *Terra Regis* in the Book of
Doomsday.

Doomsday, made by five Justices in each County, (except *Northumberland, Cumberland, Westmoreland, Durham*, and Part of *Lancaster*; which were never surveyed) and finished in 1086, after five Years Labour. Also this Book decides all Questions, whether Lands are *Demesne* or no; from whence there is no Appeal; it being of such Authority, that even *William the Conqueror*, in whose Reign it was made, submitted some Cases, wherein he was concerned, to be determined thereby. *Fitzherbert* ^o says, that Tenants in ancient *Demesne* had their Tenure from ploughing the King's Lands, and doing other Works towards the Maintenance of the King's Freehold, on which Account they had Liberties granted them. And there ^p are two Sorts of these Tenants and Tenures. One hold their Lands by Charter; the other by Copy of Court-Roll, according to the Custom of the Manor. Those by ^q Charter cannot be impleaded out of their Manor; because they may abate the Writ by pleading their Tenure. They are likewise free from Toll, for all Things bought and sold concerning their Subsistence and Husbandry; and may not be impanelled upon any Inquest. ^r If they are returned on Juries, they may have a Writ *De non ponendis in Assisis*, and an Attachment against the Sheriff. And ^s if they are disturbed by taking Toll, they may have Writs of *Monstraverunt* to be discharged. ^t They are also free as to their Persons, and their Privileges are supposed to commence by Act of Parliament. For they cannot now be created by Grant. But a ^u Lessee for Years cannot plead it; nor can a Lord in Action against him plead it; for the Land is Frank-Fee in his Hands. Frank-Fee ^v is that Tenure, whereby all the Land in *England*, except what appears to have been in the Hands of *Edward the Confessor*, at the making of *Doomsday* Book, is held, exempt from all Services,

* F. N. B. 14.
218.

p Brit. C. 66.

q F. N. B. 14.

r 1 Rep. 105.
West. 2. C. 28.
Reg. Orig. 178.
F. N. B. 165.

s F. N. B. 14.
1 Inst. 269.
New. N. B. 32.
2 H. 6. 2. 26.
t 1 Salk. 57.

u Danv. Abr.
660.

v Reg. Orig. 12.
F. N. B. 161.

vices, but not from Homage. As Estates in FEE, in FRANK-MARRIAGE, by the COURTESY, in DOWER, for LIFE, in FRANK ALMOIGN, and COPYHOLD.

129.

Estates in FEE, which, in Opposition to *Allo-* 7 Cam. Britan.
dial, or those Lands which are possessed merely in ^{93.}
 a Man's own Right, without an Acknowledgment
 to any Lord or Superior, are called *Feodal*, to sig-
 nify it is held of another. For all the Land in
England, except Crown-Land, is in the Nature of
Feodal or *Fee*, and though many hath Land by De-
 scent and Purchase, it must be with the Burthen
 laid upon them, who had *Novel Fee*; none being
 able to claim *Directum Dominium*, but the King in
 Right of his Crown; and notwithstanding he that
 hath Fee, hath *Jus perpetuum et Utile Dominium*;
 yet he owes a Duty for it; and therefore it is not
 simply his own. The most a Person can say of his
 Estate being *Seisitus inde in Dominico meo ut de*
Feodo; which is no more than as if he said: *This*
is my proper Land, to me and my Heirs for ever;
held in Nature of a Benefit, of and from another.
 And Fee is commonly divided into Fee-Simple,
 and Fee-Tail. ^a Fee-Simple is where a Person ^{a Litt. 14, 16.}
 hath Lands or Tenements for ever. And ^a none ^{a Litt. 1, 647.}
 can have a greater Estate. For a ^b Fee-Simple can- ^{4 Inst. 206.}
 not come after a Fee-Simple; nor can a Remainder, ^{b Dyer 33.}
 it being an absolute Estate. And the ^c Possessor ^{c Co. Litt. 273.}
 can give, grant and charge the same by Bond, ^{Dyer 330.}
 Deed, Will, or otherwise; or make Waste or ^{Pork. Sect.}
 Spoil upon it. Also the Wife of a Man, that is ^{236.}
 seised of such an Estate, shall be endowed; and
 the Husband of a Woman having it, shall be Te-
 nant by the Courtesy. ^d If Lands or Tenements ^{d Kitch. 153.}
 are given to a Man and his Wife, *Habendum* to
 them

them and their Heirs, they have an Estate in Fee: But if it is to them, and the Heirs of their Bodies, they have an Estate-Tail, and a Fee Expectant. But if ^e Lands are given to *Y. S.* and his Heirs; and if he dies without Heirs, that *Y. D.* shall have it to him and his Heirs; *Y. S.* hath a Fee Simple, and *Y. D.* no Estate. ^f Yet where Land is given or granted by Fine, Deed or Will, in Possession, Reversion or Remainder, to a Person and his Heirs, it will be a Fee Simple. And if ^g Land be granted to a Man and his Heirs; *Habendum* to him for Life only; and Livery of Seisin is made, it is a Fee Simple; because a Fee is expressed in the Grant. Likewise a ^h Lease, granted for a Term of Years (after which the Lessee is to have the Land to him and his Heirs, by the Rent of Ten Pounds a Year) upon Livery being made, is a Fee Simple. ⁱ But an Estate granted to a Person for ever, or to him and his Assigns for ever, is only an Estate for Life; the Word *Heirs* being wanting to make it a Fee Simple. But in Wills, which are more favoured than Grants, the Fee Simple and Inheritance may pass without the Word *Heirs*. ^k And Land given to a Man and his *Heir*, is only an Estate for Life; because the Heir cannot take by Descent; he being but one. And ^l Fee-Tail is a limited Fee, or Inheritance; whereof a Man is seised to him and the Heirs of his Body begotten, or to be begotten, being divided by the Statute *de Donis Conditionalibus* from the Fee Simple; and a particular Estate created in the Donee, called an *Estate-Tail*; because though it is cut and divided from the Fee Simple, it is to return to the Donor, and his Heirs, after the Determination of the Tail. This ^m Statute creates no Tail, but of an Estate which was Fee Simple at the Common Law, and descendible as such. And ⁿ Estates-Tail are *General* or *Special*. The first is, where Lands or Tenements are given

^e Dyer 433.

^f Plowd. 134.

^g Rep. 23.

^h 1 Inst. 217.

ⁱ 1 Inst. 19.

^k 1 Inst. 8.
Litt. Rep. 6.

^l 3 Nelf. Abr.
266. Litt. 18.

^m 1 Inst. 19.

ⁿ Litt. 14. 16.

to a Man and the Heirs of his Body, or to a Woman, and the Heirs of her Body begotten; so called, because whatsoever Issue the Person hath, to whom it is given, whether by one or more Marriages, they all inherit according to Priority of Birth. And the other is, where Lands or Tenements are given to a Man and his Wife, and the Heirs of their two Bodies begotten, it hath this Name, by reason that if the Husband or Wife dies, the Issue of the Survivor by any other Marriage, cannot inherit. Nor can ^o *General* and *Special* Tail be created at the same Time; for if they are, the *General*, which is the greater, will frustrate the *Special*. Besides these, ^p there are other Estates Tail, within the Equity of the Statute *De Donis*. As if Lands are given to a Man and his Heirs Male, or Female of his Body begotten, the Issue Male or Female shall only inherit according to the Limitation. By Virtue of this Statute, the Daughters may inherit, except in Case of a Purchase where there is a Son, who is right Heir at Law. And ^q whosoever claims *per formam Doni*, must make his Descent by such Heir, to whom it is limited; as if to Heirs Male, the Pedigree must be derived by Heirs Male; and if to Heirs Female, by Heirs Female. And an ^r Estate-Tail, after Possibility of Issue extinct, is where Lands and Tenements are given to a Man and his Wife in Special Tail; and either of them dies without Issue, or if any have Issue, it dies without leaving any Issue, whereby there is none left which may inherit by Force of the Tail; and therefore the Survivor of the Donees hath an Estate after Possibility. For if ^s Lands and Tenements are given in Special Tail; and the Donees live, till they are One Hundred Years old, the Law sees no Impossibility of having Children; and they remain Tenants in Tail. But if one dies, the Law sees an apparent Impossibility. Tenants

• 1 Inst. 28.

P 1 Inst. 24,
164.

q 1 Inst. 376.

r Litt. 32.

s 1 Inst. 28.

^t 1 Inst. 27, 28.
⁹ Rep. 119.
 Litt. Sect. 34.

^u Chanc. Rep.
 236.

in ^t Tail, after Possibility of Issue extinct, are not punishable for Waste, as are Tenants for Life. Or if they alien the Land, he in Reversion cannot have Entry *in Casu Consimili*. Yet neither they nor Tenants by the Courtesy, can suffer a Recovery; and though they have more Privileges than Tenants for Life, they have no more than Estates for Life. For if they make a Feoffment of the Land, he in Reversion may enter. Estates ^u Tail are usually created upon Settlements; though an Agreement to intail is no Intail, because no Agreement binds the Issue in Tail, where there is a first Intail without a Fine.

130.

^x 1 Inst. 47.
 West Symb.
 Par. 1. Lib. 2.
 Sect. 303.

^y Stat. West. 2.

^z Glanvill,
 Lib. 7. C. 18.

^a Flet. Lib. 3.
 C. 11.

^b Brañ. Lib. 2.

^{*} FRANK-MARRIAGE; which is where a Man, seised of Land in Fee Simple, gives it to another with his Daughter, Sister or other Relation in Marriage, to hold to them and their Heirs, either in *Liberum Maritagium*, or *Maritagium Servitio Obligatum*. ^y The first, or *Liberum Maritagium*, is a Tenure in special Tail; because of these Words in the Gift, *Sciant et me N. R. dedisse ac concessisse et presenti Charta mea confirmasse C. R. Filio meo et Catherine uxori ejus Filie J. B. in Liberum Maritagium unum Messuagium, &c.* And the ^z Effect of the Word *Liberum* is, that the Donees shall have the Land to them and the Heirs of their Bodies without doing Service, except Fealty until the fourth Degree. The Reason ^a of which is *ne Donatores vel eorum Hæredes per Homagii Receptionem a Reversione repellantur*. But from the fourth Degree downwards, they do Services to the Donor; *quia in quarto Gradu vehementer presumitur, quod Terra est pro defectu Hæredum Donatoribus reversura*. The ^b second, or *Maritagium Servitio obligatum*, is where Lands are given in Marriage with a Reservation of Services

Services to the Donor; which the Donee and his Heirs are bound to perform for ever; only Homage is not to commence till the fourth Degree; when both Services and Homage must be performed.
 * These Kinds of Gifts are now disused.

^e 2 Nelf. Abr.
 388.

131.

^d COURTESY, is where a Man taketh a Wife, ^d 1 Inst. 30. seized in Fee Simple or Fee Tail *General*, or as Heiress in Special Tail, and hath Issue by her born alive, which may possibly inherit; and the Wife dies, the Husband holds the Land during his Life, *per Legem Angliæ*; because this Privilege is not allowed in any other Country, except *Scotland*. And four Things are requisite to give an Estate by the Courtesy, *viz.* Marriage, Seisin of the Wife, Issue, and Death of the Wife. But ^e the Child must be such, as by Possibility may inherit. Therefore if Land be given to a Woman, and the Heirs Male of her Body, and she has Issue a Daughter, and dies; as the Child cannot possibly inherit, the Husband shall not be Tenant by the Courtesy; or if a Child be ript out of the Mother's Womb after the Mother's Death, though it be alive, it will not entitle to a Tenancy by the Courtesy; for it ought to begin by the Issue, and be consummate by the Death of the Wife. Besides, the Estate of the Tenant by the Courtesy, should avoid the immediate Descent. ^e Termes de la Ley, 2:6.

132.

^f DOWER; which is the Portion a Widow hath ^f 1 Inst. 30, 31, of the Lands of her Husband, after his Decease, ^{32, 35} for the Sustenance of herself, and the Education of her Children. And there are three Things requisite to entitle to it, *viz.* Marriage, Seisin, and Death of the Husband. And the Wife shall be

endowed of a Seisin in Law, as well as Deed. For when Lands and Tenements descend to the Husband, before Entry he hath a Seisin in Law; but it is not necessary the Seisin should continue during the Coverture. For if the Husband aliens the Land, the Wife shall be nevertheless endowed.

2 1 Inst. 33, 34.
Litt. Sect. 29,
47. 1 Nelf.
Abr. 267, 679.

There are five Sorts of Dower. ¹ First, by *Common Law*; which is a third Part of such Lands or Tenements; whereof the Husband is Sole Seised in Fee Simple or Fee Tail, during the Coverture; which the Widow is to enjoy during her Life. Secondly, by *Custom*; which is that Part of the Husband's Estate the Widow is entitled to after the Death of her Husband, by the Custom of any Manor or Place, so long as she lives sole and chaste. But the Quantity is sometimes more and sometimes less than a third; as by the Custom of Gavelkind, it is half the Land. In divers Manors, the Widow shall have the Whole during her Life; which is called her *Free-bench*; and in some, only a fourth Part. Thirdly, *ad Ostium Ecclesiæ*; which is the Nomination of Dower at the Porch of the Church, made by the Husband himself immediately after Marriage, by naming the particular Lands, of which the Wife is to be endowed. And as the Certainty of the Land, is openly declared by the Husband; so the Wife after his Death, may enter into it without any further Assignment. Fourthly, *ex Assensu Patris*; which is where certain Lands are named by the Husband, with the Consent of his Father, and put into Writing, as soon as the Marriage is solemnized; and if a Woman thus endowed, or *ad Ostium Ecclesiæ*, after the Death of her Husband, enters into the Land allotted her in Dower, and agrees thereto, she is excluded from claiming any Dower by Common Law. Fifthly, *De la Plus Belle*; which is where the Wife is endowed with the *fairest* Part of her Husband's Estate.

Estate. But the third, fourth, and fifth Sorts, are now disused. Dower is much ^b favoured in Law; being for the Benefit of Widows. Wherefore the Wife of one *Non compos Mentis*, of an Ideot, Outlaw, or one attainted of Felony, may be endowed; but not of a Person attainted of Treason; nor the Wife of an Alien, Jew, or the like. At ⁱ Common Law, Dower is assigned by the King's Writ, or by the Heir, or by Agreement among themselves; and if not so assigned, the Wife cannot enter into it. And where no ^k Division can be made of what the Wife is dowable, it is to be assigned in a special Manner; as of a third Presentation to a Church; the third Toll-Dish of a Mill; the third Year of Common certain; and the third Part of the Profits of an Office, Market, Fair, or the like.

^b 1 Inst. 37, 37.
ⁱ Ed. VI. C. 12.
⁵ Ed. VI. C. 11.

ⁱ 1 Bulst. 35.

^k 1 Roll. Abr. 678.

133.

ESTATE FOR LIFE; which is Land, Tenements, Goods, or an Annuity given to a particular Person for his peculiar Benefit. And ⁱ if one grants to another, and his Heirs and Assigns for his Life, and a Year over this, it is an Estate for Life only. Also when a ^m Tenant for the Term of another's Life dies, while the *Cestui que Vie* is living, he that first enters, can hold the Land as Occupant. For it does not go to the Heir; it being only an Estate for another Man's Life; which is not descendible, unless the Heir be specially named in the Grant. Nor can the Executor of the Deceased claim it; as it is not an Estate Testamentary, that should go to them as Goods and Chattels. So that no Man can entitle himself unto these Lands; and therefore the Law preferreth him who enters first, and who is called *Occupant*; and who shall hold the Land during the Life of the *Cestui que Vie*, paying the Rent, and

ⁱ 39 Ed. III. C. 25. Litt. 46.

^m Bacon's Elem. 1.

^m Co. Litt. 41,
388.

^o 2 Rep. 48.

^p 1 Inst. 6.

and performing the same Covenants and Conditions, as the Deceased was obliged to do. ⁿ And not only if the Tenant *pur terme d'Auter Vie* dies, while the *Cestui que Vie* lives, but if the Tenant for his own Life, grants over the Estate to another, and the Grantee dies before him, there shall be an Occupant. But Occupancy may be prevented, by making Leases for the Lives of others to the Lessee, his Heirs or Executors during Life of the *Cestui que Vie*. A Lease ^o made to a Person during Life, is determinable by a civil Death; but if it be during his *Natural* Life, it is otherwise. And ^p Tenants for Life have Freeholds.

134.

^q Litt. 56.
^r 1 Inst. 46.
Plowd. 273,
523.

^s 5 Rep. 2.

^t Yelv. 18.
Owen 100.

^u 1 Inst. 46,
388.
^v 2 Lill. Abr.
150.

^x 1 Inst. 6.

^q ESTATE FOR YEARS is by Lease; which must have a certain Commencement and Determination, with all the usual Ceremonies; as Sealing, Delivery, and the like. Also there must be an Acceptance of the Thing demised. ^r A Lease that commences from the Day of the Date, excludes the Day itself; otherwise the Day of Delivery is inclusive. ^s And when a Lease is sealed by the Lessor; though the Lessee hath not sealed the Counterpart; yet Action of Covenant may be brought upon the Lease against the Lessor. But where the Lease is sealed by the Lessee, and not the Lessor, nothing operates. Also a ^t Lease made to a Man, and his Heirs, goes to his Executors. ^u Though a Lease, notwithstanding it be very long, cannot be intailed, but may be assigned in Trust to several Uses. For if such Lease is limited in Tail, the Law allows not a present Remainder to be limited thereupon. And ^x a Lessee for Years, though for never so great a Term, has only a Chattel, and no Freehold.

⁷ FRANK ALMOIGN, is where an Ecclesiastical ^{v Litt. 133.} Corporation, Sole or Aggregate, holdeth Lands to ^{1 Inst. 194.} them and their Successors of some Lord and his Heirs in free and perpetual Alms. The Word *perpetual*, supposes it to be Fee Simple; though it may be without the Word *Successors*. A ² Lay ^{2 Litt. 137.} Person cannot hold in free Alms; nor need any Mention be made of being exempt from all Manner of Service. For it is free of course from *Temporal* Service; and is of the highest Nature; because it is a Tenure by *Spiritual* Service; and is held by Prescription or some Grant made before the Statutes of *Mortmain*, of the 7 *Ed. I. C. 36.* and 18 *Ed. I. C. 1.* ^a But the King is not restrained ^{a 1 Inst. 93, 99.} by these Statutes; nor a Subject licensed or dispensed with by him, to make such Grant. ^b Also ^{b Litt. 540.} where an Ecclesiastical Person holds Lands by ^{1 Inst. 99, 306.} Fealty and certain Rent, the Lord may confirm his Estate to hold to him and his Successors in *Frank-almoign*. For the former Services are extinct; and not any Thing is reserved; but that he should hold of him; which he did before, whereby this Charge and Alteration is not within the 18 *Ed. I. of Quia emptores Terrarum.*

^c COPYHOLD; for which the Tenant or Owner ^{c 4 Rep. 25.} hath not any Thing to shew but the Copy of the Rolls made by the Steward of the Lord's Court, on such Tenants being admitted to any Parcel of Land or Tenements belonging to the Manor. And ^d originally the Tenant had in Judgment of ^{d 4 Rep. 71.} Law, but an Estate at Will: Yet Custom so established it, that his Heirs inherited. Therefore the Estate of the Copyholder, is not merely *ad Voluntatem*

luntatem Domini, but *ad Voluntatem Domini Secundum consuetudinem Manerii*. So that Custom is the Life of Copyhold Estates; for without Custom, or on Breach thereof, Copyholders are subject to the Will of the Lord; and as it is created by Custom, so it is guided by Custom. * But Copyhold Land cannot now be made; because the Pillars are, that it hath been demised Time out of Mind, by Copy of Court-Roll; and that the Tenements are Parcels of, or within, the Manor. If he † who is *Dominus pro Tempore*, admits one to a Copyhold, he dispenses with all precedent Forfeitures, not only as to himself, but as to him in Reversion. For such Admittance amounts to an Entry for the Forfeiture, and a new Grant. Yet a Lord by Tort, cannot by such Admittance, purge the Forfeiture as to the right Lord.

e 1 Inst. 58.

4 Rep. 24.

f 1 Lev. 26.

137.

FREE SOCAGE; which is a yearly Rent, in Lieu for all Manner of Services. It hath been ‡ observed, that all the Lands in *England* are *Feodal*, proceeding from the King, with a Burthen at the Donation thereof; which arose in this Manner. The King gave to his Nobles, his immediate Tenants, large Possessions for ever; to hold of him for this or that Service or Rent. They in Time parcelled out the Land, so given them, to such others as they liked for Rents and Services, as they thought best. These Services were either *Chivalry*, or *Socage*. The first was either *General* or *Special: General*, when it was mentioned in the Feoffment, that the Tenant held *per Servitium Militare*, without any Specification of *Serjeanty*, *Escuage*, &c. *Special*; when it was particularly expressed by what Kind of Knight Service the Land was held. The other Kind of Service, that is,

§ Page 71.

Socage, was a Tenure, whereby Tenants held their Land to plough that of their Lords, with their own Ploughs; and do other inferior Services of Husbandry at their own Charge. This ^h slavish ^h Bract. Lib. 2. C. 25. Tenure was afterwards, by the mutual Agreement of Lord and Tenant, turned into the Payment of an annual Sum of Money; and from thence it was called *Liberum Socagium*. And by the 12 Car. II. C. 24. all Tenures, except the honorary Services of *Grand Serjeanty* (which is a Tenure whereby one holds his Lands of the King, by such Services as he ought to do in Person to the King at his Coronation; and it may also concern Matters military, or Services of Honour in Peace, as to be the King's Butler, Carver, or the like) are adjudged and taken to be for ever turned into *free and common Socage*.

138.

The EXTENT OF ESTATES; [See Page 34. No. 57.] which not only means the East, West, North, and South Limits of them; as on what Lands, Highways, or other Places they abut or bound; but likewise the Appurtenances to them; as Messuages, Lands, Woods, Rents, Advowsons, Commons, Courts Baron, and other Things, are appurtenant to a Manor; and Out-Houses, Yards, Orchards, and Gardens, to a Messuage. Also Things appurtenant, are *Corporeal* or *Incorporeal*. The first, relate to Houses and Lands, which may be touched or handled. The last are Rights issuing out of, annexed to, or exercised with Corporeal Things, as Advowsons, Titles, Annuities, Offices, Commons, Franchises, Privileges, Services, and the like.

139.

The QUALIFICATION OF TAKING ESTATES; whereby a Person is capable of taking or purchasing

M chasing

chasing Lands or Tenements, as by NATIVITY,
AGE, and NATURALIZATION.

140.

NATIVITY; or being born within the King's Dominions; which entitles a Person to his Protection, and the Benefit of the Law; for which he ought to prefer the Service of his Prince and Country, before the Safety of his Life. ¹ And this Allegiance is not confined to the Kingdom; but follows the Subjects wheresoever they go. And from hence they are called *Liege People*, and are bound to go with the King in his Wars, as well within, as without the Kingdom. And by the 9 *Geo. I. C. 24.* all Persons whatsoever, are to take the Oaths to the Government.

¹ 1 Inst. 2, 329.² Inst. 741.

141.

AGE, or FULL AGE; which signifies an Arrival to that Period of Life, called *One and Twenty*; because then a Person is supposed to have Discretion enough to govern his own Affairs. And ^k therefore a Person may then contract and manage for themselves, in respect to their own Estates; but until that Time, they cannot act with Security to those that deal with them; for their Acts in most Cases are either void or voidable. ¹ But one under Age may contract for Necessaries suitable to his Quality, and it shall be binding, or he may be Executor of a Will.

^k Perkins.¹ 1 Inst. 171.

142.

^m 1 Inst. 8, 129.

^m NATURALIZATION; whereby an Alien is made the King's natural Subject by Act of Parliament, to all Intents and Purposes, as if he were born so. For by it a Person's Issue, before Naturalization, inherits.

inherits. ^a But a Stranger, until he is naturalized, cannot have Land by Descent, or Purchase. But ^a 7 Jac. I. C. 2. ¹² W. III. C. 2. ¹ Geo. I. C. 4. no Person is to be naturalized before he has received the Sacrament of the Church, and taken the Oaths of Allegiance and Supremacy; and when naturalized, he is enabled to be of the Privy Council, or to hold Offices.

143.

The MANNER OF CONVEYING ESTATES from one to another, is by DEED, FINE, RECOVERY, or WILL. A DEED is an Instrument written on Paper or Parchment, comprehending the Agreement of the Parties thereto, concerning the Matters therein contained: The Validity whereof consists in the WRITING, SIGNING, SEALING, and DELIVERY.

144.

The WRITING expresses the Contents, and shews the different Parts, as the PREMISES, HABENDUM, REDDENDUM, COVENANTS, CONDITIONS, LIMITATIONS, RESERVATIONS, PROVISOS, REVOCATIONS, REMAINDERS, REVERSIONS, DATE, IN WITNESS and INDORSEMENTS.

145.

The PREMISES, is that Part in the Beginning of a Deed; the Office whereof is to set forth; first, the Parties Names with their Additions of Habitation and Quality. ^o Secondly, the Consideration, which is Money, or natural Love and Affection. These ^o 1 Inst. 271. ¹ Rep. 1, 6. last are sufficient to raise Uses in a Man's own Family; but if the Uses are limited to a Stranger, it must be for a valuable Consideration. Thirdly, the Description, containing the Particulars and Certainty of the Lands and Tenements to be conveyed.

P 3 Rep.

veyed. P And where a first Description is false, though the second is true, the Deed is void: *Contra*, if the first is true, and the second false.

9 1 Inst. 47.

1 Lev 287.

Cro. El. 244.

4 Fourthly, the Exceptions, which keep particular Things intervening or mixing with the Parcels or Things conveyed in the Deed from passing thereby; being a Saving out of the Deed, as if the same had not been granted. And it must only be a particular Thing out of a general one; as a Room out of a House, or a Piece of Ground out of an Estate; but likewise what is severable from, and not inseparably incident to the Grant. And 5 Fifthly, Recitals or the mentioning of some other Deed, or Thing that has been before. Recitals are not conclusive; because no direct Affirmation; and by feigned Recitals in a true Deed, Men might make what Titles they pleased; since false Recitals are not punishable. Though where it is recited that before Indenture, the Parties were agreed to do such a Thing, it is a Covenant, and the Deed itself confirms it.

2 1. Ill. Abr.
416.

146.

9 2 Rep.

The 6 HABENDUM is a Limitation of the Estate, by which the general Implication in the Premises may be qualified. As in a Lease or Grant to two Persons; if the *Habendum* be to one for Life, and the Remainder to the other for Life, this allows the general Implication of Joint-Tenancy, which would pass by the Premises, if the *Habendum* was not. And it 7 may not only qualify what is granted in the Premises; but it may also enlarge what is there, or explain the Premises; though the *Habendum* can never introduce one, who is not mentioned in them. Also if 8 one Thing is granted in the Premises; *Habendum* with another Thing not appendant: This other Thing shall not pass.

1 Jones 4.
3 Leon. 60.
Hob. 313.
Godb. 51.

11 Hob. 161,
172.

147. The

147.

The REDDENDUM is that Clause, which reserveth some new Thing to the Grantor, as Rent, Suit or Service; being usually made by these Words, *Yielding and paying*, or *Doing*. But the Grantor cannot reserve to any but himself, his Heirs, Executors, Administrators, or Assigns; nor can he reserve to himself Parcel of the annual Profits: Such as the Herbage of the Land; for that would be repugnant to the Grant; it being Part thereof.

148.

The COVENANTS are the Consent and Agreement of the Parties, to do or not to do particular Acts, or Things contracted between them: * And are generally *in Fact* or *in Law*; *in Fact*, when expressly agreed between the Parties, and inserted in the Deed; and *in Law*, when a Covenant is intended and implied, though not expressed by the Words of the Deed. As when a Lessee takes a Lease of a House or Land for a certain Term; in which Lease there is no Covenant for quiet Enjoyment, the Law will intend a Covenant on the Lessor's Part, that the Lessee shall, during the Term demised, quietly enjoy the same against all Incumbrances. All * Covenants must be to do what is lawful, or they do not bind, or if the Thing be impossible to be done, the Covenant is void. But * if any of the Parties do not perform their Covenant, a Writ or Action lies to recover Damages for the Breach of them.

* 1 Inst. 384.

† Dyer 112.

* 2 Mod. Entr.

91.

149.

The CONDITIONS are Restraints annexed to Things; upon Non-Performance whereof, the
 8 Party

Party to them receives Prejudice and Loss; but by the Performance, Benefit and Advantage. As where one leases to another, reserving a Rent to be paid at such a Feast, upon Condition if the Lessee fails of Payment, it shall be lawful for the Lessor to enter.

150.

^a 1 Inst. 204.
10 Rep. 41.

^b Cro. Eliz. 216.

^c Jenk. Cent.
32.

The ^a LIMITATIONS import, how long Estates shall continue, or imply rather a Qualification of a Precedent Estate. And they are generally by such Words as *during Life, as long as, or while*. And if there be not a Performace, according to the Limitation, it determines the Estate without Entry or Claim, which a Condition does not. ^b But if a Limitation be uncertain, it is void; and the Estate shall remain, as if there had been no such Limitation. Also ^c Limitations against Law, creating a new Form of Inheritance, are not suffered to take Effect.

151.

^d 1 Inst. 143.

^e 1 Inst. 47.

^f Roll. Rep. 80.

^d RESERVATIONS, are those Things which a Person preserves out of an Estate granted for himself; as Rent, and sometimes it has the Force of an Exception; ^e though it is very different; for an Exception is not always Part of the Thing granted, but of a Thing in being; whereas a Reservation is of a Thing not in being, but created out of the Lands and Tenements, at the Time of their being demised; ^f and it is made by the *Reddendum*, or the Word *Covenant*, which is of both Lessor and Lessee; and therefore makes a Reservation.

152.

PROVISOES, are wary Considerations concerning Things that may happen, or for doing of something;

thing; on the Performance whereof, the Deed depends; and differs from a Condition in this: A Condition is usually created by a Grantor; but a Proviso by the Grantee; though they are sometimes considered as a Condition, Covenant, or Explanation.

153.

REVOCATION, is that Part, whereby a Power is reserved for destroying, or making void the whole, or some Part of the Deed.

154.

REMAINDER is a present Interest, standing a Degree removed from Possession, by reason of some limited Estate. And a ^g contingent Remainder, is where an Estate is limited to take Place in future upon an uncertain Event; as where a particular Estate, which doth support a Remainder, may or may not determine, before the Remainder commences. Also Cross ^h Remainders, ^{h 2 Roll. Rep. 281. 3 Nelf. Abr. 98.} are when an Estate is given to two Persons, and that each shall be the others Heir. But these Remainders are seldom or never allowed by Implication.

155.

REVERSIONS are ⁱ Estates in Expectancy; because *Reversio terræ est tanquam terra revertens in Possessione donatori sive Heredibus suis post donum finitum*; and ^k differs from a Remainder, in that it ^{k Wood's Inst. 152.} returns to the Donor, or his Heirs; whereas a Remainder goes to some third Person or Stranger.

156.

The DATE of the Deed is the Time of the making thereof; declaring the Day, Month, and Year,

Year, both of the King's Reign, and the Incarnation of our Saviour.

157.

¹ Nelf. Abr.

624. Plowd.

152.

^m West's Symb.

Par. 2. Sect.

157.

The Words ¹ IN WITNESS, ascertain the Date of the Deed, and is as well a Part of it, as what is written before. And ^m INDORSEMENTS are those which are wrote on the Back of a Deed, as Receipt for the Consideration, the Sealing and Delivery for the Witnesses to sign, or what is wrote thereon by Way of Memorandum, or otherwise.

158.

The SIGNING AND SEALING, [See Page 83. No. 143.] testifies the Consent of the Parties.

159.

And the DELIVERY makes it binding and perfect.

160.

ⁿ 5 and 6 W.

and M. C. 21.

Also DEEDS are either INDENTURES, or DEEDS POLL; but they cannot be pleaded unless ⁿ stamped according to Law.

161.

INDENTURES are so called from being cut in and out, like the rolling of Waves; in order that the different Parts may appear to belong to each other. Because they are supposed to be wrote on the contrary Halves of a Skin or Sheet of Paper, which is afterwards irregularly cut into two; and therefore the Tops, when placed together, are to join in such a Manner, as to shew they concern the same Affair. To each Part, the Parties set their Hands and Seals; whereby in Law, each Part is of as great

great Force, as both the Parts together; and the Words of the Indenture are the Words of either Party. There are several Sorts of Indentures, as INDENTURES OF BARGAIN AND SALE, INDENTURES OF FEOFFMENT, INDENTURES OF GIFT, INDENTURES OF GRANT, INDENTURES OF LEASE AND RELEASE, INDENTURES LEADING THE USES OF A FINE, INDENTURES OF FINE, INDENTURES LEADING THE USES OF A FINE AND RECOVERY, INDENTURES LEADING THE USES OF A RECOVERY, INDENTURES OF SETTLEMENT, INDENTURES OF LEASE, INDENTURES OF MORTGAGE, INDENTURES OF EXCHANGE, INDENTURES OF PARTITION, INDENTURES OF CHARTER-PARTY, INDENTURES OF CO-PARTNERSHIP, INDENTURES OF APPRENTICESHIP, INDENTURES OF ASSIGNMENT.

162.

INDENTURES OF BARGAIN AND SALE; whereby the Property of Lands and Tenements is for valuable Consideration, granted and transferred from one Person to another. It must ^o be inrolled in ^{o 27 Hen. VIII.} one of the Courts at *Westminster*, or in the County ^{C. 16.} where the Land lies, before the *Custos Rotulorum*, Justices of the Peace, and within six Months after the Date. ^p But this Statute only extends to Bargains and Sales of Inheritances and Freeholds; for Bargains and Sales for Terms of Years or otherwise, are good, though not inrolled, nor by Deed indented. ^q Also Houses and Lands in *London*, ^{q 2 Inst. 676.} and any City, &c. are exempt from the Statute of Inrollment. And if ^r two Bargains and Sales, are ^{r Hob. 165.} made to two different Persons, and the last Deed is ^{Wood's Inst.} first inrolled, though both are inrolled within the ^{259. Sid. 310.} Space of six Months, the first Buyer shall have the Land; because when the Deed is inrolled, the Bargainee is seised of the Land from the Delivery of

the Deed, and the Inrollment shall relate to it. ' The Words *Bargain and Sell*, are not of absolute Necessity in this Deed ; for other Words equivalent will suffice. As if a Man, seised of Land in Fee, by the Words *Alien*, or *Grant* sells the same to another, the Deed being made in Consideration of Money, and indented and inrolled, will be a sufficient Bargain and Sale. And ' in pleading these Deeds, the Deed itself must be shewn under Seal ; and it must be set forth, that the Inrollment was within six Months, according to the Form of the Statute in such Case made and provided.

163.

INDENTURES OF FEOFFMENT ; that convey Manors, Messuages, Lands or Tenements, from one to another in Fee Simple, by the Delivery of Seisin and Possession of the Thing given or granted. And differ, according to *Littleton*, from those of Gift in this, that a Gift is always in regard to Lands and Tenements in Fee-Tail ; whereas a Feoffment is always in Fee-Simple. These Deeds are the most antient Conveyances of Land ; and in Records, we often find Fees given to Knights, under the Phrases of *De vetere Feoffamento, et de novo Feoffamento*. The first are such Lands as were granted by King *Henry* the First ; and the other, such as have been granted since the Inauguration of *Henry* the Second. And in " some Respects, they excel Conveyances by Fine and Recovery ; because they clear all Disseisins, Abatements, Intrusions, and other wrongful Estates. They also * bar the Feoffor of all collateral Benefit, as Conditions, Powers of Revocation, Writs of Error, &c. and destroy contingent Uses. They are y always applied to incorporeal and immoveable Things ; and are made by the Words, *Granted, Bargained, Sold, Enfeoffed, Alienated, Released and Confirmed*. The Way

• 9 Rep. 94.
7 Rep. 40.

• 1 Inst. 225.

• West. Symb.
235. Plowd.
554.

• 1 Inst. 5.

• 3 Salk. 165.

Way of pleading a Feoffment is thus : That *A. B.* was seised in Fee of the Place where, &c. and being so seised, *Feoffavit quendam C. D. inter alia per Nomina omnium, &c. habend. et tenend. dict' Tenementa, &c. prefat. C. D. et Hæredibus suis in perpetuum ad solum Opus et Usus, &c.*

164.

INDENTURES OF ² GIFT ; which pass Lands or Tenements. And though Gifts and Grants are said to be alike in their Nature ; yet they are very different ; Gifts extending to *Corporeal* or *Incorporeal* Things, given by Parol or otherwise ; but Grants concern only Incorporeal Things, and must be by Deed. ^a If one gives or grants Land, and does not say in what Parish or County it lies ; yet if there be any other Thing to describe it, as *lately belonging to such a Person*, or other circumstantial Matter, it may be averred where the Land lies ; and so the Gift be good. And all ^b Corporeal and ^b Immoveable Things that lie in Livery, as Messuages, Cottages, Lands, Woods, and the like, may be given, or granted in Fee, for Life or Years at first ; and be assignable over after, from one to another *in Infinitum*. ^c The Words *Give* and *Grant* in this Deed, or in a Grant, Feoffment, Release, Confirmation, or Surrender will make it any one of these Deeds at the Election of the Party ; and may be pleaded as such at his Election. And GIFTS are not only by *Deed*, but in *Word* and *Law*.

² Wood's Inst. 260.

^a Bro. Grant 53.
⁹ Rep. 47.

^b 1 Roll. Abr. 44.

^c 1 Inst. 301.

165.

GIFTS IN WORD, concern Goods ; ^d for all ^d Chattels personal, except in some special Cases, may be given without Deed ; and a Free Gift is good without a Consideration. ^e But a general

^d Perk. 57.

^e 3 Rep. 80.

Gift of a Person's Goods without any Exception, if by Deed, is liable to Suspicion, as fraudulent to deceive Creditors; for by giving all a Person's Goods, there seems to be a secret Trust and Confidence implied, that the Donee shall deal favourably with the Donor, in respect to his Circumstances. And ^f when a Gift is made in Satisfaction of a Debt, it should be in a public Manner before Neighbours; that the Goods be appraised to the full Value, and the Gift expressly made in Satisfaction of the Debt, and that on the Gift, the Donee takes Possession of them. Where a ^g Person, intending to give a Jewel to another, says to the Donee: *Here I give you my Ring with the Ruby in it*; and with his own Hand delivers it to him, this is a good Gift; notwithstanding the Ring shall bear any other Jewel; because it was delivered by the Donor himself. Or if a Person says to another, *Mr. A. B. I give you this Horse; you may take it.* This is a good Gift, though the Donee's Name should be *C. D.* but if the Donor delivers the Horse to a Person for the Use of the Donee; a Mistake in the Name, alters the Case.

^f Hob. 230.

^g Bac. Max. 87.

166.

GIFTS IN LAW, are those which the Law gives on Account of some Act done. As ^h if a Man marries, the Wife's Estate, real and personal, by Gift of the Law, becomes the Husband's; but then he is liable for her Debts. So if a Man is made Executor, the Law gives him all the Goods and Chattels of the Testator, subject to the Testator's Debts; and if a Person makes a Suit of Cloaths for another, and puts it upon him to use and wear, it will be a Gift in Law of the Apparel made.

^h 1 Inst. 151.

INDENTURES OF ¹ GRANT; which are of Incorpo- ¹ 1 Inst. 172.
 real Things not lying in Livery, and cannot pass by ³ Rep. 63.
 Word only; as Reversions, Advowsons in Gross,
 Tithes, Rents, Services, Common in Gross, and
 the like. And ^k Grants are made by such Persons ^k West Symb.
 as cannot give but by Deed. Also ¹ Grants made ¹ Sect. 234.
 by Persons *non sane Memoriae* are good against them- ¹ 1 Inst. 2.
 selves; but voidable by their Heirs; and a Man
 that is born dumb, or deaf and dumb, if he hath
 Understanding, by making of Signs, may grant
 to another, but not one born deaf, dumb and
 blind. And ^m if a Man grants to one, what he ^m Dyer 23.
 hath granted before to another in the like Manner, ^{Perk. Sect. 102.}
 the second Grant is void. Grants ⁿ are usually ⁿ Hob. 304.
 made by these Words, *Given, Granted and Con-*
firmed; and the Words of this Deed are construed
 according to a reasonable Sense, and not strained to
 what is unlikely. ^o Also Grants are expounded ac- ^o 1 Inst. 146,
 cording to the Substance of the Deed, and agree- ^{313.}
 able to the Intention of the Parties, not the strict
 grammatical Sense.

INDENTURES OF ^p LEASE AND RELEASE; which ^p Accomp.
 convey the Right or Interest in Lands or Tene- ^{Conv. 1 Vol.}
 ments, to him that hath Possession thereof; which, ^{129.}
 since the 27th *Hen. VIII. C. 10.* of Uses, hath
 taken Place of Feoffments, and is become a very
 common Assurance to pass Lands and Tenements.
 For it amounts to a Feoffment, drawing after it the
 Possession with actual Entry, and supplying the
 Place of Livery and Seisin, required in that Deed.
 It is called a *Lease and Release*; because first, the
 Lease is made for a Year; whereby the Premises
 for the Consideration of five Shillings, are granted,
 8 bargained

bargained and sold for that Term, at the Rent of One Pepper Corn, if demanded ; to the Intent that the Lessee, by Virtue thereof, may be in actual Possession of the Lands intended to be passed by the Release ; and thereby enabled, according to the Statute of Uses, to receive the whole Right or Title of the Lessor, by his Release. But *Littleton* says, that if a Lease is made for Years, and the Lessor releases to the Lessee, before Entry, such Release is void ; because the Lessee hath only a Right, and not Possession. And a Release cannot enure to enlarge the Estate, without the Possession ; which is true at Common Law, but not upon the Statute of Uses, after the Execution of the Leases for a Year ; whereby the Bargainee is in Possession without actual Entry. The Release is made by the Words *Granted, Bargained, Sold, Aliened, Released, and Confirmed* ; reciting the Lease for a Year, and declaring the Uses. ^a Both the Lease for a Year, and Release, make but one Conveyance ; being in the Nature of one Deed ; and the ^r Words *Bargain and Sell*, are sufficient in a Lease for a Year, to ground a Release without actual Entry. But if the Words *Demise, Grant, and to Farm Let*, are used, the Lessee cannot accept the Release, until in actual Possession.

^a 1 Mod. 252.

^r 2 Lill. Abr.
435.

169.

INDENTURES LEADING THE USES OF A FINE ; that declare to whom the Benefit and Profits of Lands and Tenements shall accrue, when conveyed from the Owner in Fee, upon the Account of a Purchase or Settlement. And by the Statute *de Finibus* 18 Ed. I. they are to be made before the Fine ; whereby the Cognisor covenants to pass a Fine to the Cognisee of particular Things to particular Uses, by a Time limited ; from whence the Indentures receive the Name of *leading the Uses* of a Fine.

a Fine. But by the 4th and 5th *Ann. C.* 16. the Uses may be declared after the Fine levied, and be good in Law.

170.

INDENTURES OF FINE; which shew the Day, Year and Place; before what Justices taken; between whom made; and what Things are passed thereby. And they are supposed to be made by the Parties after a Litigation and Controversy that hath been between them; as *Amicabilis Compositio, et Finalis Concordia ex consensu et licentia Domini Regis, vel ejus Justiciariorum.*

171.

INDENTURES LEADING THE USES OF A FINE AND RECOVERY; which declare that the Fine intended to be passed, is to the Intent, that the Cognisee may become a perfect Tenant to the Freehold; in order that he may permit a Writ of Entry *Sur disseisin en le post* to be prosecuted against him, returnable at the Time limited, for the Benefit of the Persons specified.

172.

INDENTURES LEADING THE USES OF A RECOVERY; that testify that the Releasee who is in Possession by Virtue of a Bargain and Sale, that hath been made to him for a Year, is only created Tenant to the Freehold, until a good and perfect Common Recovery, may be duly suffered of the same; in Manner, and within the Time, and for the Benefit of the Persons therein mentioned.

173.

INDENTURES OF SETTLEMENT; which are the Agreement between a Man and a Woman, intending

* Accomp.
Conv. 143.

* Tothil 43.

* Preced. Chan.
44, 63, 255.

ing to intermarry ; whereby the Man agrees to settle and assure such Lands to the Benefit of the Woman, in the Manner thereby contracted. * They are generally limited in this Manner : To the Husband for Life ; after his Death, to the Wife for Life for her Jointure, and to their Issue in Remainder ; with Limitations to Trustees to support contingent Uses ; and in such Settlements, Leases are made to Trustees for Terms of Years, to raise Daughters Portions. And the † Law is ever careful to preserve them ; especially that Part which relates to the Wife, of which she may not be divested, but by her own Fine. For if a Woman, being about to marry, in order to prevent her Husband's Disposal of her Land, conveys it to Friends in Trust ; and they after Marriage, make sale of the same, the Court of Chancery will decree the Purchaser to reconvey to her. And † where a Woman on Marriage, by the Man's Consent, makes over her Estate to be at her own Disposal, she can also dispose of the Product and Increase thereof ; or if the Wife hath a separate Maintenance, settled on her by the Husband, she may by Writing, in the Nature of a Will, give away what she saves, if she dies before the Husband, and shall have the same herself in Case she out-lives him, without its being liable to her Husband's Debts. Yet where a Settlement is made on the Wife, in Consideration of her whole Fortune, and equivalent to it, the Wife's Portion will, in Equity, be subject to the Husband's Bond-Debts after his Decease, to ease the real Estate of the Heir.

174.

* Co. Litt. 43.

* INDENTURES OF LEASE ; that vest the Property of Lands, Tenements or Hereditaments, in the Lessee for *Life*, or *Years*, at a Rent reserved :
And

7 And he that hath an Estate for Life, may make a Lease for his Life; which shall be good, as long as the Estate for Life continues. ^{7 Wood's Inst. 267.} But a Lease for Life cannot be made *in futuro*, by the Common Law; because Livery cannot be made to a future Estate. But where a Lease is made for Life; *Habendum* at a Day to come, and after the Day, the Lessor makes Livery, there it shall be good; and a Lease in Reversion may be made for Life, which commences at a Day that is Future. And a ^{a 1 Inst. 5. 1 Rep. 156. 6 Rep. 35. Vaugh. 85.} Lease for Years, may begin from a certain Day, either past or to come; but a Demise, having no certain Commencement, is void; for every Contract sufficient to make a Lease, ought to have Certainty in the Commencement, in the Continuance, and in the End. But a Term cannot commence upon a Contingency, which depends upon another Contingency. ^{b Plowd. 70.} If one makes a Lease for Years after the Death of *C. D.* if he dies within ten Years, this is a good Lease, in Case he dies within that Time; otherwise not. Or where a ^{c Bro. Grant 54. 1 Rep. 155.} Man has a Lease for eighty Years, and he grants it to another to hold for thirty Years, to begin after his Death, it will be good for the whole thirty Years, provided there be so many of the eighty to come at the Time of the Lessor's Death. Also a ^{d Hob. 174.} Lease made in 1763, from the Lessor's Death, until *Anno Domini* 1780, is good: Or if a Lease be during the Minority of *A. B.* or until he shall come to the Age of Twenty-one Years, they are good Leases; and if he dies before his full Age, the Lease is ended. And if a ^{e Noy's Max. 67.} Man make a Lease for Years to one, and afterwards makes a Lease for Years to another of the same Land, the second Lease is not void, but shall be good for as many Years as it is made for, after the Determination of the First.

f Litt. 332.
1 Inst. 205.

g Toth. 133.
1 Vern. 316,
476.

h 2 Vern. 338.
Chanc. Rep.
149. 2 Lill.
Abr. 206.

i 4 and 5 W.
and M. C. 16.

k 2 Vern. 554.

INDENTURES ^f OF MORTGAGE; which are for pawning Lands or Tenements; whereby the Mortgagor agrees that they shall for ever vest in the Mortgagee, if the Money is not repaid on the Day appointed. It is called a *Mortgage*; because it is a *Dead-Pledge*, until the Money is returned; or for that, if the Money is not paid at the Day, the Land is *Dead, Mortua*, to the Debtor, being forfeited to the Creditor. But the Mortgagor hath an Equity of Redemption in the Court of Chancery, and may call the Mortgagee to Account for the Profits. And ^e no Allowance shall be made to the Mortgagee for his Pains and Trouble, if he manages the Estate himself; but if he employs a skilful Person, and gives him a Salary, it must be allowed; for no Person is bound to be the Mortgagor's Bailiff. In ^h Equity it is allowed, that if Lands are thrice mortgaged, the third Mortgagee may buy in the first Incumbrance to protect his own Mortgage; and he shall hold against the second Mortgagee, if such second Mortgagee does not satisfy him the Money he paid on the first, and also his own Money which he lent on the last Mortgage. ⁱ Or if Persons having once mortgaged Lands, Mortgage the same a second Time, without discovering the first, they forfeit their Equity of Redemption; and the second Mortgagee may redeem. ^k And if a Person, about to lend Money on Mortgage, enquires of a prior Mortgagee, whether he has any Incumbrance on the Estate, and he does not own the same, it shall postpone him.

INDENTURES OF EXCHANGE; which are the mutual Grant of equal Interest in Lands or Tenements;

ments; the one in Lieu of the other. There may be in this Deed a Proviso of Re-Entry in Case of Eviction; ¹ though there is always a Tacit Condi- ^{14 Rep. 121.} tion to this Purpose; for if either of the Parties be evicted, the Exchange is defeated. And ^m an Ex- ^{m 11 Rep. 80.} change made between Tenant for Life, and Tenant ^{Moor 665.} in Tail, after Possibility of Issue extinct, is good; because their Estates are equal. ⁿ Joint-Tenants ^{n 1 Inst. 50.} and Tenants in Common, after Partition made, ^{1 Mod. 91.} may exchange their Lands; and by this Deed, Freeholds pass without Livery of Seisin; but there must be Execution of the Exchange in the Life-Time of the Party, or the Exchange is void. Also the Word *Exchange* is to be used in this Deed, which is most properly done conjunctionally between the Parcels. Thus R. S. hath given, granted, &c. all that Messuage, &c. to have and to hold the said Messuage, &c. unto the said D. S. his Heirs and Assigns for ever, in Exchange for all that Messuage, &c. ^o Exchanges made by Infants, &c. ^{o Perk. Sect. 277, 281.} Persons *non sanæ Memoriae*, a Husband of the Wife's Lands, &c. are not void, except by the Infant at his full Age. But the Heir of a Person *non sanæ Memoriae*, and the Wife, after the Death of the Husband, may wave the Possession, and disagree to them.

177.

INDENTURES OF PARTITION; that shew the true and full Proportion each Party is to hold by the Division that is agreed to be made of the Lands or Tenements, descended by Common Law or Custom among Co-Heirs, Parceners, Joint-Tenants and Tenants in Common.

178.

^p INDENTURES OF CHARTER-PARTY; that con- ^{p 2 Inst. 673.} tain the Covenants and Agreements made between

† Litt. 332.
1 Inst. 205.

‡ Toth. 133.
1 Vern. 316,
476.

§ 2 Vern. 338.
Chanc. Rep.
149. 2 Lill.
Abr. 206.

¶ 4 and 5 W.
and M. C. 16.

* 2 Vern. 554.

INDENTURES [†] OF MORTGAGE; which are for pawning Lands or Tenements; whereby the Mortgagor agrees that they shall for ever vest in the Mortgagee, if the Money is not repaid on the Day appointed. It is called a *Mortgage*; because it is a *Dead-Pledge*, until the Money is returned; or for that, if the Money is not paid at the Day, the Land is *Dead, Mortua*, to the Debtor, being forfeited to the Creditor. But the Mortgagor hath an Equity of Redemption in the Court of Chancery, and may call the Mortgagee to Account for the Profits. And [‡] no Allowance shall be made to the Mortgagee for his Pains and Trouble, if he manages the Estate himself; but if he employs a skilful Person, and gives him a Salary, it must be allowed; for no Person is bound to be the Mortgagor's Bailiff. In [§] Equity it is allowed, that if Lands are thrice mortgaged, the third Mortgagee may buy in the first Incumbrance to protect his own Mortgage; and he shall hold against the second Mortgagee, if such second Mortgagee does not satisfy him the Money he paid on the first, and also his own Money which he lent on the last Mortgage. [¶] Or if Persons having once mortgaged Lands, Mortgage the same a second Time, without discovering the first, they forfeit their Equity of Redemption; and the second Mortgagee may redeem. ^{*} And if a Person, about to lend Money on Mortgage, enquires of a prior Mortgagee, whether he has any Incumbrance on the Estate, and he does not own the same, it shall postpone him.

INDENTURES OF EXCHANGE; which are the mutual Grant of equal Interest in Lands or Tenements;

ments; the one in Lieu of the other. There may be in this Deed a Proviso of Re-Entry in Case of Eviction; ¹ though there is always a Tacit Condition to this Purpose; for if either of the Parties be evicted, the Exchange is defeated. And ^m an Exchange made between Tenant for Life, and Tenant in Tail, after Possibility of Issue extinct, is good; because their Estates are equal. ⁿ Joint-Tenants and Tenants in Common, after Partition made, may exchange their Lands; and by this Deed, Freeholds pass without Livery of Seisin; but there must be Execution of the Exchange in the Lifetime of the Party, or the Exchange is void. Also the Word *Exchange* is to be used in this Deed, which is most properly done conjunctionally between the Parcels. Thus R. S. hath given, granted, &c. all that Messuage, &c. to have and to hold the said Messuage, &c. unto the said D. S. his Heirs and Assigns for ever, in Exchange for all that Messuage, &c. ^o Exchanges made by Infants, &c. Persons *non sanæ Memoriae*, a Husband of the Wife's Lands, &c. are not void, except by the Infant at his full Age. But the Heir of a Person *non sanæ Memoriae*, and the Wife, after the Death of the Husband, may waive the Possession, and disagree to them.

¹ 4 Rep. 121.

^m 11 Rep. 80.
Moor 665.

ⁿ 1 Inst. 50.
¹ Mod. 91.

^o Perk. Sect.
277, 281.

177.

INDENTURES OF PARTITION; that shew the true and full Proportion each Party is to hold by the Division that is agreed to be made of the Lands or Tenements, descended by Common Law or Custom among Co-Heirs, Parceners, Joint-Tenants and Tenants in Common.

178.

^p INDENTURES OF CHARTER-PARTY; that contain the Covenants and Agreements made between

^p 2 Inst. 673.

Merchants and Sea-faring Men, touching their
Merchandize and Maritime Affairs.

179.

INDENTURES OF COPARTNERSHIP; which contain the Covenants that are made between two or more, in order to carry on a Joint-Trade.

180.

INDENTURES OF APPRENTICESHIP; which are to be for seven Years, and do not only secure the Apprentice to the Master, but likewise obliges the Master to teach the Apprentice his Trade. And where ^a Money is given with an Apprentice to the Master, there is a Duty of Six-pence in the Pound for any Sum under Fifty Pounds, and Twelve-pence in the Pound for any Sum above, to be paid within a Month, if within the weekly Bills of Mortality; or two Months in any other Part of *Great-Britain*, after the Execution of the Indentures; and if the full Sum to be paid, is not inserted, or the Duty paid by the Time limited, the Apprentice shall be incapable of following his Trade, and the Master liable to Penalties. But there are several Statutes allowing further Time to stamp the Indentures, as the 6th and 7th of *Geo. I.* and 2 and 3 *Geo. II. &c.* But when there is no Money given to the Master, there is no Duty due, or to be paid. ^r If a Master dies within the Term of a Person's Apprenticeship, he is to go to the Executor or Administrator to be maintained, if there be Assets, and the Executor or Administrator, may bind him to some other Master for the Remainder of his Time. Serving an Apprenticeship, gains a Settlement by Statute; but a Covenant between a Master and a third Person (the Servant not being Party) makes no Apprenticeship to gain a Settlement.

28 Ann. C. 9.

^r Salk. 479.

ment. Also Church-Wardens and Overseers of ⁴² Eliz. C. 2. the Poor, may bind out poor Apprentices by Assent of two Justices of the Peace. And if a Person refuse to accept a poor Apprentice, he shall forfeit Ten Pounds.

181.

INDENTURES OF ASSIGNMENT; that transfer and set over the Interest a Person hath in any Thing to another; whereby the Assigner, covenants to save the Assignees harmless from other Grants and Deeds; that he is Owner, and hath Power to assign; that the Assignees shall have quiet Enjoyment, and to make further Assurance. The Words required in this are *Granted, Assigned* ^{1 Inst. 301.} and set over.

182.

* DEEDS POLL, [See P. 88. No. 160.] receive ^{2 Co. Litt. 53.} their Name from being smooth and even at Top without indenting, and are only signed and sealed by the Effector or Signer of the Deed; whose Act and Consent is necessary, which is the reason of their being unindented. For the Person to whom it is made, need not sign a Counterpart; because the Nature of the Agreement is such as requires no Covenant from the Effectee or Signee. And every Deed that is pleaded, shall be intended to be a ^{5 Rep. 20.} Deed Poll, except it be alleged to be indented, or if a Deed begins with the Words *this Indenture*, and is not indented, it may operate as a Deed Poll. Also the Words of a Deed Poll, are the Words of him who makes it; and will bind him only; and these Deeds commonly begin thus: *To all People to whom these Presents shall come, or, Know all Men by these Presents*, and are generally used for selling, assigning, or giving Goods and Chattels personal, securing

securing Money lent, appointing Bailiffs, Gamekeepers and other Officers, and for authorising another to do any lawful Act that a Person doth not chuse to do himself, as to recover Debt, sue a third Person, or the like.

183.

A FINE [See Page 83, No. 143.] is a Covenant, or Concord acknowledged and recorded before a competent Judge, touching Lands and Tenements that have been in Litigation between the Parties to the Concord, in order to prevent all future Controversies, and for the better Credit of the Transaction. It is supposed to be made in the Presence of the King; because levied in his Court; and it binds Women Covert and others, whom ordinarily the Law disables to act, by Reason that all Presumption of Deceit or Evil Meaning is excluded, where the King and his Court of Justice are privy to the Act. ² Fines may be levied of any Thing whereof a *præcipe quod Reddat* lies; as Manors, Messuages, Lands, Rents, &c. or of any Thing whereof a *præcipe quod faciat* lies, as Customs, Services, &c. or where a *præcipe quod permittat*, or *præcipe quod teneat* may be brought. Also they are to be considered according to their NATURE, EFFECT, MANNER OF BE-

² 2 Inst. 513.
5 Rep. 225.
West. Sect. 25.

² West. Sect. 21.
30.

ING PASSED, FORM, PARTS and OPERATION. ² In their NATURE, they are *Single* or *Double*. A *Single* Fine is that by which there is not any Thing granted or rendered back by the Cognizees to the Cognizors or any other. A *Double* Fine contains a Grant and Render back, either of some Rent, Common, or other Thing out of the Land, or of the Land itself, to all or some of the Cognifors for some Estate, limiting thereby Remainders to Strangers not named in the Writ of Covenant.

But

But sometimes a Fine is called *Double*; because the Land lies in several Counties.

184.

WITH ^b regard to the EFFECT of Fines, they ^b West. Sect. 20. are *Executed* or *Executory*. A Fine *Executed* is such as of its own Force gives present Possession to the Cognizée; so that he need not any Writ of *Habere facias Seisinam*, or other means to enter on the Premises: And the reason is, because a Fine passeth by Way of Release of a Thing, which the Cognisee is supposed already to have, by virtue of a former Gift of the Cognisor. A Fine *Executory* doth not execute the Possession in the Cognisee without Entry or Action; but requires a Writ of Seisin, unless the Party be in Possession of the Lands. For if he is in Possession at the Time of levying the Fine, there need not be any such Writ, or any Execution of the Fine; and then the Fine will enure by Way of Extinguishment of Right; not altering the Estate or Possession of the Cognisee, however it may better it.

185.

THE MANNER OF A FINE BEING PASSED is *with* Proclamation, or *without* it. A Fine *with* Proclamation is termed a Fine according to the Statutes 1 R. 3. C. 7. and 4 H. 7. C. 24. by Reason it is solemnly proclaimed in the Court of Common Pleas after the ingrossing it. Also Transcripts are sent to the Justices of Assize and Justices of the Peace of the County in which the Land lies, to be openly proclaimed there: And ^c *such* is every Fine that is pleaded intended to be, ^c 3 Rep. 86. if it be not shewed what Fine it be. And these Fines are the best and most used; because if there be any Error in the Proclamations it is a good Fine

Fine at Common Law. A Fine *without* Proclamation is called a Fine at Common Law; because not levied in the Manner that was used before 4 H. 7. C. 4. and is still of the same Force by the Common Law to discontinue the Estate of the Cognisor, if the Fine be executed.

186.

THE FORM of a Fine is the Variation or Difference of one from another; of which there are four Sorts. First, *Sur Cognizance de droit come ceo que il ad de son done*; so called, because the Cognisor thereby acknowledges the Right of the Cognisee, which he hath by Gift from the Cognisor. It is always levied with Proclamation, according to the 4 H. 7. C. 24. and is the best and surest that can be passed. ^d And though this Fine cannot be levied to a Person not named in the Writ, nor the Uses immediately vested in him; yet it may in *Secundo Gradu*, by way of Remainder. Secondly, *Sur Cognizance de droit tantum*; so named because the Cognisor only acknowledges the Estate to be the Right of the Cognisee. It is executory and much of the Nature of a Fine *Sur Concessit*, and is commonly used to pass a Reversion: And then it is expressed in the Fine, that the particular Estate is in another, and that the Cognisor is willing the Cognisee shall have the Reversion, or that the Land shall remain to him after the particular Estate is spent. ^e And sometimes it is used by Tenant for Life to make a Lease in the Nature of a Surrender to him in the Reversion; but not by the Word *Surrender*; for a particular Tenant, as for Life, cannot surrender his Tenement to him in Reversion or Remainder by Fine, but he may grant and release to him by Fine. Thirdly, *Sur Grant et Render*, is a double Fine comprehending the Na-

^d Plowd. 248,
249.

^e Plowd. 268.
Dyer, 216.

ture and *Effect* of the Fines *Sur Cognissance de droit come ceo que il ad de son done* and *Sur Concessit* : The *Nature*, in that it supposes the Cognisor to release the Land with Warranty to the Cognisee; after which the Cognisee by the same Deed, Grants and Renders back the same to the Cognisor : And the *Effect*, in that it is partly executed, and partly executory. For so far as it resembles the Fine *Sur Cognissance de droit come ceo que il ad de son done*, it is an agreement executed : And where it resembles the Fine *Sur Concessit*, it is executory. Also a Fine *Sur^r Grant et Render* differs from a Fine *Sur Cog-* ^{f 3 Rep. 93d} *nissance de droit come ceo que il ad de son done* in this, that the latter must be levied of the Land in the Writ; whereas the first may be of another Thing than is in the Original; so that it be implied in, incident to, or Part of, what is contained in the Writ. As where *R.* brings a Writ of Covenant against *W.* for the Manor of ———, we cannot levy a Fine to *R.* of a Rent to be issuing out of the said Manor according to the Writ; yet *R.* may *Grant and Render* to *W.* a Rent out of the said Manor. And fourthly, a Fine *Sur concessit*, whereby the Cognisor remains seised of the Fee, and the Cognisee hath only an Estate for Life or Years: For which Reason it is Executory.

186.

The PARTS of a Fine are first, the ORIGINAL WRIT. Secondly, LICENTIA CONCORDANDI, or LICENCE TO LEVY A FINE. Thirdly, the CONCORD. Fourthly, the NOTE of the Fine. And fifthly, the FOOT of the Fine.

187.

The ORIGINAL WRIT; which is either a *Writ of Covenant*, *Warrantia Chartæ*, or *Breve de Recto*.

P

The

The Writ of Covenant is the usual Original: It demands the Land itself, and is brought by the Cognisees against the Cognisor to have an Execution and Performance of the Agreements between them. *Warrantia Chartæ* is to compel the Feoffee, who hath conveyed Lands with Warranty to the Feoffee, to warrant the same; and if the Land be recovered against him, he shall recover as much in Value against the Warrantor. But if this Writ is not brought by the Feoffee, depending the first Writ against him, he hath lost his Advantage. And *Breve de Reçto* is of so high a Nature, that whereas other Writs in real Actions are only to recover Possession of the Lands in Question; this aims to recover the Seisin and the Property, whereby the Right of Possession and Property are tried together. Of this Writ there are two Sorts; first, *Breve Magnum de Reçto*, called *Right Patent*; because it is sent open; ^s and is the highest of all others, lying for him that hath a Fee-Simple in the Lands or Tenements sued for, against the Tenant of the Freehold at least, and in no other Case. ^h But it seems to be extended farther than originally meant; for a Writ of Dower, which lies for a Tenant in Dower, is *patent*: And ⁱ the same may be said in some other Cases. Also, there is a special Writ of Right patent in *London*; otherwise termed a *Writ of Right, according to the Custom*. And, Secondly, *Breve Parvum de Reçto*, called a Writ of *Right Close*, brought where one holds Lands and Tenements by Charter in ancient Demesne, Fee-Simple, Fee-Tail, for Life, or in Dower, and is disseised. It is directed to the Bailiff of the King's Manors, or to the Lord in ancient Demesne, according to where the Lands lye, commanding him to do Right in his Court.

^s F. N. B. 12.

^h F. N. B. 7.

ⁱ Reg. Orig.
Fleta, Lib. 5.
c. 32.

188.

Secondly, ^k LICENTIA CONCORDANDI, or LI- ^{k 12 Car. II. C.}
 CENCE TO LEVY A FINE, for which the King's ^{12.}
 Silver or Post-fine is paid. It is called the *Post-fine*
 in respect of that paid at the signing of the Writ,
 for when the Writ is brought it must be com-
 pounded by the Commissioners in the Alienation-
 Office, before the Fine can pass; where, if the Land
 is of the Value of five Marks, six Shillings and
 eight Pence is to be paid as a Fine due in the Ha-
 naper upon the Original, and after *Conge de Accorder*
 ten Shillings for the King's Silver *pro Licentia Con-*
cordandi, being always half as much again as the
præ Fine. ¹ This is collected from the Cognisee ^{1 22 and 23 Car.}
 by the Sheriff of the County where the Land lies, ^{II.}
 to be answered by him into the Exchequer. ^{See Stat. 23}
^{Geo. II. C. 14.}

189.

Thirdly, The CONCORD, which contains the Agree-
 ment between the Parties, declaring how and in
 what Manner the Things mentioned in the Writ
 shall pass, and as the Writ is the Foundation, so
 the Concord is the Substance of a Fine. It is taken
 and acknowledged by the Party before one of the
 Judges of C. B. or by Commissioners in the Coun-
 ty, and begins, *And the Agreement is such, &c.*

190.

Fourthly, The NOTE of the Fine is a Brief of
 the Fine made by the Chirographer from the Writ
 of Covenant and Concord before it is engrossed.

191.

And fifthly, the FOOT of the Fine, including
 the whole, giving an Account of the Parties, the

Premises, before whom, and when made; so called; because it is the last Part of the Fine from which the Indentures are made by the Chirographer, and then the Fine is said to be engrossed.

192.

The OPERATION of the Fines is their Obligatory Power, whereby they bind Persons that are or are not Parties thereto. Thus the Statutes of the 4th Hen. VII. C. 24, and 32d Hen. VIII. C. 36, declare the Force of Fines, and how far they bar and take away the Entry or Action of Parties, having Right. Privies in ^m Blood, as Heirs of the Cognitor, are barr'd presently, but Strangers to the Fine, as Persons not Privies or Parties thereto, have five Years to enter and claim their Right, and as many Years are given after a Remainder or Reversion falls on the Forfeiture of Tenant for Life.

^m Plowd. 367.
374. 375.
^z Rep. 93.
Raym. 151.

ⁿ Jenk. Ca. 45.
^o 10 Rep. 49.

^p 5 Rep. 124.

^q 1 Inst. 519,
520.

ⁿ And he that hath two Titles shall have twice that Time to make his Claim. ^o And if there is no present or future Right, but only a Possibility at the Time of levying the Fine, a Person may enter and claim when he pleases. ^p And when there is only a Right to a Rent or something issuing out of the Land, the Persons that have it, are not barr'd at all. Also, ^q if a Feme-Covert dies during Coverture, being no Party to the Fine; if an Infant being Party to it, and having present Right, dies in his Infancy; if a Person beyond Sea when the Fine was levied, never returns; if a Person dies in Prison, or *non compos Mentis*, the Heir is not limited to any Time.

193.

A RECOVERY (See Page 83, N^o. 143.) is grounded upon a feigned Suit supposed to have been brought in the Court of Common Pleas. It hath the

the Appellation of *Common*, as being the common Path to that Act for which it was ordained, and is framed according to the Wisdom and Policy of our Law; whereby though it be a Judgment of the Court, it is not in an adversary Manner, but with the Consent and Permission of the Parties: And this is the Reason why a Recovery is said to be *suffered*; and notwithstanding this Judgment is fictitious, as to any actual Litigation upon which it is made, yet it is given upon a real Writ actually brought, and is a Judgment pursuant to the Rules of common Law, for there is a Recoveror, a Recoveeree, and a Vouchee. The Recoveror is the Person to whom the Land is intended to be conveyed, called the *Demandant*; because he demands the Lands or Messuages mentioned in the Writ of Entry, (wherein he appears to be Plaintiff) by alleging, that the Tenant of whom he demands them, hath no Right to the same, but on a Disseisin which one A. B. (the fictitious Disseisor) hath unjustly made within thirty Years last past, which is the Time limited for bringing the Writ of Entry, that lays the Foundation of the Recovery; and is chiefly three Degrees, first, *Sur Disseisin*, which is brought by the Disseeisee against the Disseisor, upon a Disseisin done by him. Secondly, *Disseisin in le per*, lies for the Heir in Descent, who is said to be *in per*, (as he comes in by) his Ancestors; so, if a Disseisor makes a Feoffment or Gift, the Feoffee or Donee are *in per* (by) the Disseisor. And thirdly, *Sur Disseisin in le per et cui*, for the Disseeisee against the Donee of Feoffee of the Disseisor. These Degrees are either by Act in Law, as in case of a Descent, or by Act of the Party; so that Intrusion, Disseisin upon Disseisin, Succession, (where the Disseisor is a Person of Religion, and his Successor enters) Judgment, (where a Person hath had Judgment to recover against the Disseisor) or Escheat

r 32 Hen. VIII.
C. 2.

Escheat on the Deseisor's dying without Heir, or committing some capital Crime, puts the Disseisee's Cause or Action out of the Degrees, driving him to his *Writ of Right* in respect of such long Possession, and so many Alterations in different Hands. Wherefore by the Statute of *Marlbridge*, 52 Hen. III. C. 29, the Writ of Entry *in le post* is given; so called from the Words *post Disseisinam quam A. B. injuste et sine judicio fecit*. Thus a Writ of Entry itself lies only against the first Disseisor, who is the Occasion of the first Degree: And in the second and third, against no Persons but Tenants by Purchase or Descent; and in all Cases whereunto these Degrees do not extend in *le post*. The *Recoveree* is the Person against whom the Writ of Entry is brought, termed the Tenant to the *Præcipe*; because he is the Defendant to the Writ of Entry that begins, *Præcipe S. W. (i. e. the Recoveree) quod reddat F. D. (i. e. the Recoveror) unum Messuagium*: And he is likewise in Possession of the Freehold, for if the Person designed to be sued as Tenant is not in Possession, there must be a Fine, Feoffment, Bargain and Sale inrolled, or a Lease and Release of the Premises to be conveyed by the Recovery made to him, upon the Execution whereof he becomes in Construction of Law perfect Tenant to the Freehold; and the Vouchee is the Person under whom the Tenant claims and receives this Name, from being vouched to warranty for the Tenant: when the latter finds himself sued for the Land he lawfully possesses, he is supposed to appear and avow to the Court that he claims under such a Person, naming the Vouchee, who is bound by Agreement to defend his Title or yield him other Lands of the same Value with those for which he is sued: And the Vouchee, who is imagined to be at the same Time in Court, after having had the Premises demanded of him in Form, makes a
feint

feint Defence by tendering an Issue, that the Disfeisor named in the Demandant's Count never disfeised him in the Manner set forth. Upon this the Demandant obtains Time to reply; and when he comes again into Court prepared to make out the Truth of his Count, the Vouchee never appears, not being able to rejoin, whereby the Demandant is entitled to Judgment, which is given for the Demandant to have the Land of the Tenant, who is to have of the Land of the Vouchee to the Value he has lost. There may be *Single*, *Double*, or *Treble* Vouchees. *Single* Vouchee, when the Writ of Entry is brought against the Tenant in Tail, who vouches the common Vouchee, usually the Crier of the Court, or the Bag-bearer of Writs to the *Custos Brevium*. This Recovery only bars the Tenant in Tail and his Heirs of such Estate, as is in his Possession, with the Remainder depending upon it, and the Reversion expectant which others have; and of all Leases and Incumbrances derived out of such Remainder or Reversion. *Double* Vouchee is, when the Writ is brought against a created Tenant, who vouches the Tenant in Tail, and he the common Vouchee; and this is the safest Way of proceeding. This Recovery bars the first Vouchee and his Heirs of every such Estate, and all others of Right to Remainders and Reversions, dependant and expectant upon the same; and all Leases and Incumbrances derived out of them; and it will also be a Bar of the Estate, whereof the Tenant was then seised in Reversion or Remainder. And *Treble* Vouchee is when the Writ of Entry is brought against a created Tenant, who vouches the Tenant in Tail, and the Tenant in Tail the next in Remainder, and the next in Remainder the common Vouchee. This Recovery is to make a perpetual Bar of the Estate of the Tenant; and of every such Estate of Inheritance, as
at

• 1 Rep. 62.
3 Rep. 61.
6 Rep. 42.

† Wood's Inst.
252.

ⁱ 3 Rep. 5.

at any Time hath been in the first or second Vouchee or their Ancestors; whose Heirs they are of such Estate; and as well of every Reversion thereon dependant as of all Leases, Estates, Charges, and Incumbrances, derived out of any such Reversion or Remainder. And * the Force and Effect of a Recovery is to destroy all Estates in Tail, Remainder, or Reversion, and Incumbrances derived out of them; that a Person may be thereby enabled to sell, give, or devise the Estate in Fee, or in what Manner he pleases; and the Recompence adjudged over shall go in Succession of the Estate, as the Land lost should have done; and as it would not be reasonable for the Heir to have the Land and Recompence in Value also, he can only claim the last. And this † supposed Recompence is the Reason why a common Recovery is a Bar to all that are in Remainder or Reversion, as well as the Issue in Tail; whereas a Fine only bars the Heir in Tail, and not those in Remainder or Reversion, unless upon Non-claim in due Time; though ⁱ Strangers are not barr'd by a Recovery and Non-claim, as they are in a Fine.

194.

* 1 Inst. 113.

A WILL, (See p. 83. N°. 143.) is called a LAST WILL AND TESTAMENT, from its declaring the Testator's Mind in regard to those Things he would have done after his Death. And * three Things are requisite to the Perfection of a Will: First, Inception, which is the Writing of it. Secondly, the Progression, being the Publication thereof: And thirdly, the Consummation of it, which is the Death of the Party. In making a Will, the Testator should do it in perfect Memory, and by good Advice. There should be two Parts, one to remain in the Hands of the Person that made

it,

it, and the other with some Friend, that it may be less liable to Suppression after the Testator's Death. It should be signed, sealed, published, and declared in the Presence of three or more credible Witnesses. It should be wrote in one Hand, on one Sheet of Paper or Parchment, without Rasure or Interlineation; but if there be more than one Sheet or Skin, the Testator should sign and seal every Sheet of the same, before the Witnesses present at the Execution. And when a Will is altered, it is done by Codicil, which is a Supplement to it by Way of Explanation, Addition or Retraction, and ^y it ought to be annexed to it; and an Executor may oblige any Person detaining a Will or Codicil, to deliver them up by the Ecclesiastical Law, and recover them in the Ipiritual Court. Also, ^z if a Testator gives any Thing to a Person by Word of Mouth, it is called a *Nuncupative Will*, as being a verbal Declaration of his Mind before a sufficient Number of Witnesses, and good to dispose of personal Estate but not Land: Yet no ^a Nuncupative Will, whereby the Thing bequeathed exceeds thirty Pounds, is good, unless proved by three Witnesses, who were present at the making thereof, and bid by the Testator to bear witness; nor except it be made in the Time of the last Sickness of the Testator, and in his House, or where he has been resident for ten Days before, if he is not surprized with Sick-ness from home: And no Evidence shall be received to prove such Will after six Months from the speaking of the testamentary Words, if the same, or the Substance of it be not committed to writing within six Days after the making: Neither shall any Probate of such Will pass the Seals till fourteen Days after the Death of the Testator; and Process issued to call in the Widow, or next of Kin to the deceased, to contest it, if they should think fit. And ^b all Witnesses that are allowed to

^y Swinh. p. 24
Sect. 1.

^z Nels. Abr.
1191.

^a 29 Car. II;
C. 3.

^b 4 and 5 Ann.

Q

be

be good Witnesses upon Trials at Law, shall be good Witnesses to prove any Nuncupative Will, and * the last Will will stand in force; but if two Wills are made of one Date, they are both void; yet if in a Will there are two Devises of the same Thing, the last Devise shall take place, for as a latter Will overthrows a former, so the last Part of a Will is superior to the first.

1 Inst. 112.
Plowd. 341.

196.

THE CEREMONY OF CONVEYING ESTATES, (See p. 34. N°. 57.) is the Investiture or giving Possession as Livery of Seisin; which ^d is the Testimonial of the willing departing of him, who allows the Seisin, from the Thing whereof Livery is made, and of the willing Acceptance of the Party to whom given by his receiving it; first invented, that the Public might have Knowledge of the Passing or Alteration of Estates from one to another, and thereby be better able to determine the Right of Possession, if the same should be contested, and they impanelled, or otherwise have to do concerning the same. And this ^e Livery relates to corporeal, not incorporeal, Things; and where a House and Lands are conveyed, the House is the chief, the Lands being incident thereto; wherefore Livery must be made of the House, and not upon the Land: Also, ^f it is either in *Deed* or in *Law*; in *Deed*, when the Grantor and Grantee, or Persons authorized by them for that Purpose, come to the Door of the House, or some Part of the Land, and having declared the Cause of their Meeting, in the Presence of Witnesses they read the Deed or the Contents thereof; and if by Attorney, the Power of Attorney; and then if it is a House, they take the Ring, Latch, or Key of the Door, and deliver the same to the Grantee, or his Attorney, saying, I

^d West. Symb.
Par. 1. lib. 2.

^e 2 Rep. 31.
^f Leon. 374.

^f 1 Inst. 31, 48,
52.

R. D.

R. D. do hereby deliver unto you O. W. Possession and Seisin of this Messuage, or Tenement, and Appurtenances, to hold to you, your Heirs and Assigns, according to the true Intent and Meaning of this Indenture. Whereupon the Grantee enters first alone and shuts the Door, and then he opens it, and lets in the rest. Seisin of Land is delivered in the same Manner; only instead of the Key, Latch, or Ring of the Door, a Clod of Earth, and a Twig or Bough of one of the Trees thereon, are delivered to the Grantee, or his Attorney. No ² Person ought to be in the House, or upon the Lands, when Livery is made, but the Persons who make it, for all others are to be moved from it; yet if a Lessee of the Grantor at the Time of making it is present, and contradicts the same, it is void. Livery in *Law* is that which amounts to the same as an actual Possession; as if the Grantor being in view of the House or Land, saith to the Grantee, after Delivery of the Deed, *I give to you yonder House and Land, with their Appurtenances; to hold to you and your Heirs; go into the same, and take Possession accordingly:* After which, if the Grantee enters on the Land at any Time during the Life of the Grantor, it is a good Deed and Livery.

197.

THE FORM OF CONTRACTS, (See p. 34. N^o. 57.) or the Manner in which the mutual Agreement, whereby two or more Persons promise and oblige themselves to perform some Act or pay a certain Rent, is made. All ^h Contracts ought to ^h Dyer, 91. be certain, perfect, and complete; for an Agreement to give so much for a Thing, as it shall be reasonably worth, is void for Incertainty: So is a Promise to pay Money in a short Time, or to give so much if a Person likes it when he sees it; but ¹ 1 Per. 112, 114. if one contracts with another to sell him such ^{Shep. Abr. 294.}

Q 2

Cattle

Cattle for Ten Pounds, if the Buyer does a certain Thing, or else to have Twenty Pounds, it is a good Contract, and certain enough: Or if one Person agrees with another to give him so much for his horse as *A. B.* shall judge it to be worth: When *A. B.* hath judged it, the Contract is compleat, and an Action will lie on it; though the Buyer shall have reasonable Time to demand the Judgment of *A. B.* but if the Buyer dies before the Judgment is given, the Contract is determined. Also in^k Contracts the Time is to be regarded, in and from which the Contract is made. The Words of a Contract shall be taken in the common and usual Sense, as they were taken in that Place where spoken; and the Law does not so much regard the Form of the Words, as the Substance and Mind of the Parties thereto.

^k 5 Rep. 83.
^z Bull. 175.

198.

THE SOLEMNITY OF CONTRACTS, [See p. 34. No. 57.] or those Things that are requisite in the making them, as giving them Earnest, putting the Agreement into Writing, that the Parties may sign it; making the Bargain before Witnesses, and the like.

199.

THE OBLIGATION OF CONTRACTS; ¹ [See p. 34. No. 57.] which imply in themselves an *Assumpit* in Law to perform the same; for a Contract would be to no Purpose, if there were not Means to enforce the Performance of it; yet to make them bind, there must be some lawful Consideration, or Cause; they being otherwise invalid. For if^m one says to another, *I will sell you all my Lands or Goods*; and it is not agreed what the other shall give or pay for them; so that there may be a *Quid pro Quo*, it

¹ 1 Lill. Abr.
308.

^m Terms de la
Ley; 459, 460.

is a *Nude Contract*, and void in Law; upon Non-performance whereof no Action will lie; because *ex Nudo pacto non Oritur Actio*; the Law supposing Error in making these Contracts; they being, as it were, of one Side only.

200.

THE EXPOSITION OF DEEDS; [See p. 34. No. 57.] whereby the true Intent and Meaning of them are declared; for this Exposition is always reasonable without Injury to the Grantor, yet of the greatest Advantage to the Grantee, expounding upon the whole: So that if the second Part of a Deed contradicts the first, such second Part is void; but if it explains the former both of them shall stand. It is also consonant to the Rules of Law.

201.

EXPOSITION OF ACTS OF PARLIAMENT; [See p. 34. No. 57.] which shews the Extension of the Words of the Law to Cases unexpressed, yet having the same Reason: So that where one Thing is Enacted, all other Things of the like Nature are included. Thus the Statute of *Gloucester* gives Action of Waste against him that holds Land for Life, or Years: For which Reason a Person shall have Action of Waste against a Tenant for one Year or half a Year, though without the Words of the Act; because within the meaning of it. The Preamble of a Statute is like a Key to open the Intent of the Makers of the Act; and as it is deemed true, good Arguments may be drawn from it. But the best Way to explain a Statute is to consider what Answer the Lawgivers would probably have given to the Question made, if proposed to them. Also in the Exposition of Statutes, these

n 1 Inst. 11.
o Plowd. 465.
3 Nelf. Abr. 265.
p 3 Rep. 7.

these Things are observed ; First, what was the Common Law before the making of the Statute : Secondly, the Mischief and Defect which the Common Law did not provide against : Thirdly, what Remedy the Statute hath appointed : And fourthly, the true Reason of this Remedy :

202.

PROCESS, [See p. 34. No. 57.] or the Beginning and Foundation of a Suit ; which is either *Original* or *Judicial* ; *Original*, issuing out of the Court of Chancery, under the Great Seal of *England*, and tested by the King, commanding the Sheriff, to whom it is directed, upon the Plaintiff's finding Pledges of Prosecution, to compel the Defendant to appear at the Return, before the Judges of the Court therein mentioned : And this gives Jurisdiction to hold Plea of that Matter : *Judicial*, which issues out of the Court, where the *Original* is returned after the Suit is begun : But to prevent Delay and Trouble, the present Practice is to sue out the *Judicial* Writ first, and the *Original* any Time before Judgment is signed.

203.

PROCEEDINGS, [See p. 34. No. 57.] or the Manner in which a Suit, whether Real or Personal, Civil or Criminal, is carried on from the *Original* Writ to final Judgment. And in ^a Superior as well as Inferior Courts, they must be regularly and formally entered, or they may be reversed for Error in the King's Bench.

^a 2 Lill. Abr. 379.

204.

JUDGMENTS, [See p. 34. No. 57.] which are the Sentences given by the Judges after hearing a Cause ;

Cause; and are either *Interlocutory* or *Final*: *Interlocutory*, which the Court gives upon due Consideration had of the Matter; whereby it appears the Plaintiff ought to recover, but remains uncertain what Damages are proper to be allowed: Therefore the Sheriff is commanded to assess them by a Jury, and acquaint the Court thereof. Upon his Report final Judgment is given, and Costs are added by Way of Increase, that the Plaintiff may suffer as little as possible: *Final*, whereby the Party is to have the Damages decreed by the Court, immediately given him. Every ^{r 1 Salk. 213.} Judgment ought to be compleat and formal. One ^{Cro. Eliz. 817.} Judgment cannot determine another; and the Jud- ^{Trin. 23 Car. B.}ges will not give Judgment against Law; although the Plaintiff and Defendant do agree to it. And ^{R.} where a Judgment is partly by Common Law, ^{r 1 Salk. 24.} and partly by Statute, that at Common Law may remain and be compleat without the other. Also, ^{r 4 H. 4. c. 23.} they are to continue till attained by Error: And ^{r Pasf. 14.} if not above seven Years standing, a *Scire* ^{Car. 1. B. R.}*facias* may be had to revive it without Motion.

205.

EXECUTIONS, [See p. 34. No. 57.] or the Means for obtaining Possession of the Thing recovered by Judgment of Law, are either a *Fieri facias*, an *Elegit*, or a *Capias ad Satisfaciendum*. This ^{x Rep. 874} last is called by Sir Edward Coke, in Opposition to others which he terms *Final*, an Execution with a *Quousque*; because though it tendeth to an End, it is not final; the Imprisonment of the Defendant not being absolute, but only till he satisfies the Plaintiff. The *Fieri Facias* commands the Sheriff to whom it is directed, to levy the Debt and Damages of the Goods and Chattles of the Defendant, that they may be rendered to the Plaintiff.

Plaintiff. The *Elegit* authorises the Sheriff to deliver unto the Plaintiff one Moiety of the Land, and all the Goods and Chattles of the Defendant, except the Beasts of his Plough. And the Plaintiff is Tenant by *Elegit* of the said Moiety, till his whole Debt and Damages are paid. And the *Capias ad Satisfaciendum* orders the Sheriff to take the Defendant, and safely keep him; so that he may have his Body at the Return thereof, before the Court where the Judgment was given to make Satisfaction to the Plaintiff: And when Execution is not taken out within a Year and a Day, the Judgment must be revived by *Scire facias*; which charges the Sheriff, to whom it is directed, to acquaint the Defendant, to shew Cause (if he hath any) at the Return of the Writ, why Execution ought not to pass against him on a Judgment recovered by such a Person, at such a Time last past.

206.

THE BOUNDS AND LIMITS OF COURTS, [See p. 34. No. 57.] shew how far their Jurisdiction or Authority extend in administering Justice; for Courts have a general and a limited Power to redress Wrongs and punish Offenders; and ¹ are either

¹ 1. Inst. 117.
260. 4 Rep. 52.
² Roll Abr. 574.

207.

COURTS OF RECORD, having Power to hold Plea, according to the Course of Common Law, where the Debt or Damages is Forty Shillings, or above; or COURTS NOT OF RECORD that are unable to hold Plea of Debt or Damages amounting to that Sum, or where the Proceedings are not according to the Course of Common Law, nor inrolled.

208.

208.

THE TEMPORAL COURTS [see the Analysis] are THE COURT OF CHANCERY, THE COURT OF KING'S BENCH, THE COURT OF COMMON PLEAS, THE COURT OF EXCHEQUER, THE COURT OF THE LORD STEWARD OF THE KING'S HOUSE, THE COURT OF MARSHALSEA, THE COURT OF ADMIRALTY, THE COURT MARTIAL, THE HUNDRED COURT, THE COURT LEET, THE COURT OF TURN, THE COURT OF PIEPOWDER, JUSTICE-SEAT, SWAINMOTE, THE COURT OF ATTACHMENT, THE COURTS OF UNIVERSITIES, THE COURT OF HUSTINGS, THE COURT OF CONSCIENCE, THE COURT OF COMMON COUNCIL, THE CHAMBERLAIN'S COURT, THE WARDMOTE, THE COURT OF HALYMOTE, THE COURT OF CURSUS AQUÆ, or WATERCOURSE, and THE COURTS OF WALES.

209.

THE COURT OF CHANCERY, which is the Grand Court of Equity, instituted to moderate the Rigour of the other Courts that are tied to the strict Rules of Common Law, having a twofold Jurisdiction; *Ordinary* and *Extraordinary*: *Ordinary*, whereby the Chancellor is obliged in his Proceeding to observe the Laws, Statutes and Customs of the Nation. This Court hath Jurisdiction to hold Plea of *Scire facias* for Repeal of Letters Patent, Petitions, *Monstrans de Droit* upon Recognizances in this Court, Traverses of Offices, to prove that an Inquisition is defective; and wrong Executions upon a Statute Staple, &c. But the Execution upon a Statute Merchant is returnable either into the K. B. or C. B. It also holds Plea of all Actions personal, by or against any Officer or Minister of this Court, and by Acts

R

of

of Parliament, of several Offences and Causes. From it issue all Original Writs, all Commissions of Charitable Uses, Bankrupts, Sewers, Ideots, Lunatics, &c. that pass under the Great Seal. The ² Proceedings of this Court are by Bill as in the King's Bench; though not inrolled on Rolls, but remain in *Filaciis*, being filed in the Petty Bag Office. In prosecuting Causes, if the Parties descend to Issue, this Court cannot try it by a Jury, but the Record is delivered into the King's Bench, to be tried there.

² 1 Danv. Abr.
748. 4 Inst. 79,
80, 81, 82, 87,
88.

210.

^a EXTRAORDINARY; whereby the Chancellor proceeds *Secundum equum et Bonum*, tempering the Rigour of the Law with the Sweetness of Equity, where Mercy mitigates the Severity of Justice. This Court takes Cognisance of Matters of Fraud and Deceit, for which there is no Remedy at Common Law: Of all Accidents, as relieving Obligors, Mortgagors, and others against Penalties and Forfeitures upon Statutes, Bonds, Mortgages, and the like; when their Intention was to pay the Debt or Duty; but some extraordinary Matter happened to disable the Debtor; and of all Breaches of Trust and Confidence not executed. Also this Court affords Relief in all unreasonable Engagements without Consideration; or when a Charge lies upon one Man alone at Common Law, it will make others contribute to the Charge. It will distinguish a Man's Lands confounded with others; compel Men to perform their Agreements; reduce a general Custom of a Manor, to a Certainty; relieve a Copyholder against the ill Usage of the Lord; ascertain Fines of Copyholders; decree for a Liberty of Common, Fishing, or the like; and, upon every Interruption, order an Attachment; for
Inclo-

^a West. Sym.
of Chancery,
Sect. 18, 19.
1 Roll. Abr.
372.

Inclosures to be made of Lands and Grounds that are Common, or for inclosing Lands in a Parish, forcing the Person to consent upon an Equivalent, where others agree; for Recovery of Money or Land given to charitable Uses, and misapplied: It may determine who shall have the Tuition of an Infant; force unreasonable Creditors to compound with an unfortunate Debtor; make Executors and others, give Security and Interest for Money that is to lye long in their Hands; order the Performance of a Will especially, if it concerns Land; confirm a Title, though the Writings relating thereto are lost; make Conveyances, defective through Fraud or Mistake, good and perfect; enforce the Inrollment of a Deed, if necessary; oblige Men to come to an Account with each other; avoid the Bar of an Action by reason of the Statute of Limitations; and Cases of the like Nature. The Proceedings of this Court are by Bill of Equity, that sets forth the Occasion of the Bill, and prays Relief; and that there is no Remedy at Common Law; and also desires Process of Subpœna against the Defendant to compel him to answer the Charges of the Bill. In some Cases it likewise prays an Injunction; though the Bill must not be impertinent, Scandalous or Criminal; for if it is, the Defendant may refuse to answer it, till that Part is expunged, or upon a Motion, may obtain an Order to have it referred to a Master to report, whether it be so or not; and if reported in the Affirmative, the Court will, upon Motion, make another Order for the same to be expunged, and that the Plaintiff shall pay the Defendant his Costs occasioned thereby, to be taxed by the said Master. After the Bill hath been signed by Counsel, and filed by one of the Six Clerks, the Subpœna is taken out; which may be done before in Case of an Injunction; but then the Bill must be filed, before

the Return of the Subpœna. Upon the Defendant's Appearance, if there be no Cause for a Plea or Demurrer, he puts in his Answer; then the Plaintiff replies, unless he files Exceptions against the Answer, as insufficient, which must be signed by Counsel; and the Defendant hath Eight Days after Exceptions filed to submit, whether he will put in a further Answer or not. If he refuses, the Plaintiff may move to refer it to the Master, to look into Bill, Answer and Exceptions; and certify, whether the Answer is sufficient in the Points excepted to, or not; which if reported insufficient, the Plaintiff takes out a Subpœna against the Defendant for Forty Shillings Costs, if the Answer was sworn in Town; and Fifty Shillings Costs, if the Answer was sworn in the Country, and takes out another Subpœna, returnable immediately against the Defendant, for him to put in a better Answer. This last Subpœna may be served on the Defendant's Clerk in Court. But if upon the Master's Report of the Insufficiency of an Answer, the Defendant is advised, that it is sufficient to a Common Intent, he may except to the Master's Report, which Exceptions must be signed by Counsel, and delivered to the Senior Register; and at the same Time, Five Pounds deposited with him, of which he gives a Certificate, a Copy whereof must be served on the Plaintiff's Clerk in Court. After this, either Party may petition the Lord Chancellor to appoint a Day for arguing the Exceptions before his Lordship. If these Exceptions are allowed good, the Court orders the Defendant to take back the Five Pounds deposited with the Register; but if over-ruled, the Court orders the Plaintiff to receive the Five Pounds from the Register, in Lieu of Costs, in regard to such Exceptions, and the arguing thereof. When the Answer and Replication are filed, the Plaintiff takes out a Subpœna against
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the Defendant to rejoin, and serves him therewith, or he may petition or move the Court for a Subpoena to rejoin, returnable immediately, and that Service thereof on the Defendant's Clerk in Court, may be good Service; and if his Witnesses live in the Country, may in the same Petition, pray that the Defendant's Clerk in Court, may in four Days after Notice, join and strike Commissioners Names with the Plaintiff's Clerk in Court, or in Default thereof, that the Plaintiff may have a Commission for Examination of his Witnesses, directed to his own Commissioners. For Witnesses are examined upon Interrogatories in Court, or by Commissioners in the Country; and when this is done, an Eight-Day Rule is given to pass Publication; which being expired, Publication of the Depositions is made, and the Cause set down to be heard on the Six Clerks Certificate, after which follows the Decree. The Officers in Chancery are

211.

The CHANCELLOR, or Chief Judge, styled LORD HIGH CHANCELLOR OF GREAT-BRITAIN.

He is not made by Letters Patent; but *per Traditionem Magni Sigilli sibi per Dominum Regem*; and

by his Oath, he is to see all Things concerning the Court of Chancery disposed according to his Advice.

It ^b belongs to him *ratione Officii*, to pronounce the Cause of Summons at the Beginning of Parliament; to be Prolocutor in the House of

Lords by Prescription; to appoint Justices of the Peace; he being Conservator of the Peace throughout all England, by Prescription.

He ^c is to be present in the King's Councils, and visit all Hospitals and free Chapels of the King's Foundation.

and ^d if the Ordinary offers to visit them, a Prohibition lies. He ^e receives and keeps all Bishop-

ricks

^b Elefm.

Lib. 1. C. 5.

^c Co. Litt. 96,

344.

^d F. N. B. 42.

^e Ed. IV. C. 18.

Wood's Inst. 460.

f Plowd. 528.
38 Ed. III.
F. N. B. 35.

21 Hen. VIII.
C. 13.

2 H. VIII.
C. 11.

ricks and Baronies, that are void and fallen into the King's Hands. It is his Privilege to present to all the King's Benefices under Twenty Pounds, except those by Lapse : Yet ⁱ these Presentments must pass under the Great Seal ; but it appears by the 22 Ed. IV. C. 18. that it belongs to the Chancellor *Virtute Officii*, to present to all the King's Churches under the yearly Value of Forty Marks. He ^s may retain three Chaplains, Attendant on his Person, who may purchase Licences, or Dispensations to have and keep two Benefices with Cure of Souls. Also ^h he may pass Things through the Seals, without paying any Fees.

212.

12 R. 2. C. 2.

The MASTER OF THE ROLLS ⁱ is one of the greatest Officers and Magistrates of the Realm. He hath judicial Power ; is the Chief of the Masters in Chancery, and Keeper of all Records, Judgments, Sentences and Decrees given in this Court.

213.

The TWELVE MASTERS IN CHANCERY, who, except the Master of the Rolls, usually sit in Court as Assistant to the Lord Chancellor ; and References touching Matters of Practice, and other Things are made to them ; upon which they make their Reports. Also they administer Oaths, take Affidavits, Acknowledgments of Deeds, Recognizances, and the like.

214.

The SIX CLERKS, who file all the Proceedings in Equity, and issue out some Patents that pass the Great Seal.

222. Th

215.

The TWENTY-FOUR CURSITORS, who make out all original Writs.

216.

The REGISTER, who enters up all Orders and Decrees.

217.

The MASTER OF THE SUBPOENA OFFICE, who makes out all Subpoena's.

218.

The EXAMINERS, who take the Depositions of Witnesses, and make Copies of the same.

219.

The CLERK OF THE AFFIDAVIT OFFICE, who files all Affidavits.

220.

The CLERK OF THE ROLLS, sits constantly in the Rolls, to search for Deeds, Offices, and the like; and make Copies of the same.

221.

The CLERKS OF THE PETTY-BAG OFFICE; who have a great Variety of Business in making out Writs of Summons to Parliament, *Conge D'Esires* for Bishops; Patents for Customers; *Liberates* upon Extents of Statutes Staple, and Recovery of Recognizances forfeited, &c.

222.

The ACCOUNTANT GENERAL, who receives the Money ordered to be deposited in Court, and pays it by Order.

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223. The

223.

The SERJEANT AT ARMS, who apprehends Persons standing in Contempt.

224.

The WARDEN OF THE FLEET, who receives such Persons as are committed by the Court.

225.

The CLERK OF THE CROWN, who writes and prepares special Matters of State for the Great Seal, by Order of his Majesty, or Council.

226.

The CLERK OF THE HANAPER, who enters the Effect of Charters, Patents, Commissions and Writs in a Book, and collects the Fees due for them.

227.

The CLERK OF THE PRESENTATIONS for Benefices of the Crown in the Chancellor's Gift.

228.

The CLERK OF THE APPEALS, on Appeals from the Court of the Archbishop to the Court of Chancery, and divers other Officers who are constituted by the Chancellor's Commission.

229.

The COURT OF KING'S BENCH, is the chief Court at Common Law, called *Curia Domini Regis*; because it formerly followed the King, who tried Causes himself, which is the Reason why original Writs are returnable *Coram Nobis Ubicunque fuerint*

fuermus in Anglia; and the King is still presumed by Law to sit in Person, whereby this Court exercises supreme Authority; and is divided into the CROWN SIDE and PLEA SIDE.

230.

The CROWN SIDE, that determines all Criminal Matters, wherein the King is Plaintiff, as Treasons, Felonies, Breaches of the Peace, and all Causes prosecuted by Indictment, Inquisition or Information, or removed hither by *Certiorari*.

231.

The PLEA SIDE, which hath Cognizance of all personal Actions, by Bill or Writ, as Actions of Debt, Case, Detinue, Covenant, Account against an Officer, Minister or Clerk of the Court, or otherwise: Of all Real and Mixt Actions, as Ejectment, Replevin, Trespass, *Quare Clausum fregit*, Waste, and the like; and of all Actions against Persons in the Custody of the Marshal of the Court; as every one sued here, is supposed to be. Also this Court may examine and correct the Errors of the Common Pleas, and other inferior Judges. It can reverse a Judgment given in the King's Bench in *Ireland*. It can repeal the King's Letters Patent by *Scire facias*. It grants a *Habeas Corpus* on Motion, to relieve Persons wrongfully imprisoned. It restores Freemen unjustly disfranchised; and may bail any Person whatsoever, where bailable by Law. The Proceedings of this Court are by *Bill*, or *Original*: By *Bill*, which is the beginning an Action by Way of Declaration, where there is no Occasion for a Writ to make the Defendant appear; he being an Officer of the Court, or actually in the Custody of the Marshal: By *Original*, which is a Writ issuing

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out

12 Geo. I.
C. 29.

15 Geo. II.
C. 27.

out of Chancery, and obliging the Defendant to appear in this Court; though a Bill of *Middlesex* & *Latitat* are used to ground an Action; except against privileged Persons, or in Ejectment, and a few other Cases. If the ^k Cause of Action is Ten Pounds or above, an Affidavit must be made by the Plaintiff of such Debt; but if the Cause of Action is under that Sum, the Defendant must be personally served with a Copy of the Writ; ¹ Eight Days after the Return whereof, he is to file Common Bail; or the Plaintiff, after Affidavit of Service made, may file it according to the Statute; but when a Defendant is arrested, he hath Twenty-four Hours to go where he pleases to get Bail, the Sheriff's Officer being prohibited by 2 Geo. II. C. 22. during that Time, from carrying the Person arrested to a Tavern, Alehouse, &c. or to the House of an Officer, without the free and voluntary Consent of the Party, or to carry such Person to Prison, or take any Reward for keeping him out of Gaol. Also he hath four Days, if arrested in *London* or *Middlesex*, to file Special Bail; and six Days if in any other County. After Bail is perfected, a Declaration is filed, to which the Defendant demurrs or pleads. If he pleads, the Plaintiff replies, upon which Issue is joined, (though sometimes the Defendant rejoins, the Plaintiff sur-rejoins, the Defendant rebuts, and the Plaintiff sur-rebuts) then the Cause is heard, Judgment given, and Execution taken out. The Officers of this Court are,

232.

The CHIEF JUSTICE, created by Writ.

233.

THREE OTHER JUDGES, made by Letters Patent.

234. The

234.

The CLERK OF THE CROWN, who frames, reads, and records all Judgments.

235.

The SECONDARY, or Deputy to the Clerk of the Crown.

236.

The CLERK OF THE RULES, who draws up all Rules and Orders relating to the Crown Side.

237.

The CHIEF CLERK, who subscribes all Writs and other Proceedings; examines Matters referred to him, and makes his Report thereon, taxes Costs, and informs the Court in Point of Practice.

238.

The SECONDARY, who attends the Court, and officiates for the Chief Clerk.

239.

The DEPUTY to the Secondary, who stamps all Latitats, Attachments, Habeas Corpus's, Certioraries, *Scire facias*, *Procedendo's*, *Elegits*, *Restitutions*, *Habere facias Possessionem et Seisinam*, Superfedeas, Prohibitions, and keeps Remembrances thereof; so that a Person may know if any of these Writs are made out, by searching with him. Also all Writs returned, *Postea's*, Writs of Error, and Affidavits of Debt, except those concerning Bills of *Middlesex*, are filed in this Office. He generally receives the Money ordered to be paid into Court.

240.

The CUSTOS BREVIVM files Originals and other Writs, whereon Proceedings are had to Outlawry, examines and seals all Records of *Nisi prius* for Trials at the Affizes.

241.

The TWO CLERKS OF THE PAPERS, receive all Special Pleas, Demurrers and Pleadings, signed by Counsel, and make up the Paper Books thereof; (which the Plaintiff's Attorney always bespeaks) whereon a Rule is given for the Defendant's Attorney to bring it to him again to be entered in four Days, or Judgment to go by Default. They enter down in their Books, the Names of Causes to be heard, and attend the Court, and read Affidavits, Records and Proceedings.

242.

The CLERK OF THE DECLARATIONS, with whom is left all Declarations, where the Defendant's Attorney is not to be found, and he makes an Alphabetical Paper of such Declarations, that the Defendant's Attorney may, upon searching, have the same delivered to him. With him is also filed a Copy of Declarations against Prisoners and Officers of the Court.

243.

The SIGNER OF BILLS OF MIDDLESEX, who stamps Bills of *Middlesex*, and keeps an Entry of the Names of the Plaintiffs and Defendants therein, and all Affidavits of Debt, concerning such Writs.

244.

The CLERK OF THE RULES, takes notice of all Rules and Orders made in Court, except those of

the Crown Side, and afterwards draws them up, and enters them in a Book at large. With him are given all Rules of Course on a *Cepi Corpus*, *Habeas Corpus*, Writs of Enquiry, &c. and files all Affidavits, except those of Debt.

245.

The CLERK OF THE ERRORS, allows all Writs of Error, and makes Supersedeas thereupon into any County. He also makes Transcripts of Records, to be carried either into the Exchequer-Chamber, or House of Lords.

246.

The CLERK OF THE COMMON BAILS AND POSTEAS, who files the Bail-Pieces, and marks the Posteas.

247.

The CLERK OF THE DOCKETS, who enters all Judgments, Issues and Proceedings in this Court, and keeps Dockets thereof. He likewise keeps one Book for entering Commitments and Surrenders; and another for entering General Issues.

248.

The FILAZERS, who make out Mesne Process after the Original, in suing to Outlawry, and have the Benefit of all Process and Entries thereupon.

249.

The MASTER OF THE SEAL-OFFICE, who keeps the Great Seal for sealing of Writs in this Court, and the Common Pleas.

250. The

250.

The MARSHAL, or his Deputy, always attends the Court, to receive into his Custody such Persons as shall be committed.

251.

The CRYER, who makes Proclamation of summoning and adjourning the Court, calls Non-Suits, and swears Jury-Men and Witnesses. And the TIPSTAFF, who attends each of the Judges at his Chambers, and takes Persons into his Custody by Rule of Court, or a Judge's Warrant.

252.

The COURT OF COMMON PLEAS, which extends itself throughout *England*, and is called COMMUNIA PLACITA ; because the Pleas and Controversies between common Persons, are there tried and determined ; and seems to have been erected for the Ease of the Subject, and Dispatch of Business. This Court has been always kept at *Westminster* ; though some fancy it was moveable from the Words of *Magna Charta*, which say *Communia Placita non sequantur Curiam nostram, sed teneantur in aliquo Loco certo* ; the Words *Communia Placita*, not meaning the Court of Common Pleas, as their present Idea represents, but the Actions arising between Subject and Subject ; so termed to shew the King is in no Manner concerned therein : And therefore this Sentence in *Magna Charta*, amounts to no more than a Promise made by the King to redress the public Grievances, by fixing a Court in some convenient Place for trying those Suits, that the Subject might not be put to the extraordinary Expence of following the *Curia Domini Regis*, in which they were prosecuted. For the Courts belonging to the King, were then kept in his Palace, and moveable with

with the King's Household. With this Opinion, *Gwyn* in his Preface to his Readings, coincides, by saying that till *Henry the Third* granted (*i. e.* ratified) the *Great Charter*, there were but two Courts called the King's Courts, *viz.* the King's-Bench, and the Exchequer. Nor does *Sir Ed. Coke*, in the Preface to the Eighth Report, prove otherwise; he only affirming his Opinion to be, that the Court of Common Pleas was constituted before the Conquest, and not by *Magna Charta*, by reason there were *Justiciarii de Banco* at that Time. It is true there were Justices, so called at the Time he mentions, but that does not assert the Existence of the Court; these Justices receiving their Name from sitting in the *Curia Domini Regis in Banco*, that is, in Open and Solemn Court. The Cognizance of this Court reacheth to Actions real, that concern Inheritances, by which Fines and Recoveries; pass to personal Actions of Things Transitory, as Money, Goods and Chattels personal; to Mixt Actions partaking of the Nature of both, as Ejectments, *Quare Impedit*, and Waste; wherein is recovered, not only the Land or Parsonage, but likewise Damages for Disturbance and Detainer; to Actions popular, as *Decies tantum*, Champerty, Maintenance, and the like; to Actions penal of Debt, &c. upon any Statute, which gives a Penalty for the Breach thereof, to those who will sue for the same: And to Actions by Bill against Officers and privileged Persons of the Court. It hath likewise Cognizance of Causes by *Recordare facias loquelam*, *Pone* or Writ of false Judgment; and can grant Prohibitions to keep Temporal and Ecclesiastical Courts within due Bounds. The Proceedings of this Court are always by Original; and the First Judicial Writ is a *Capias*; which is returnable as well as all the others *Coram Justiciariis nostris apud Westm.* The Officers of this Court are

253.

The LORD CHIEF JUSTICE, AND THREE OTHER JUSTICES, created by Patent, *Quam diu se bene gesserint.*

254.

The CUSTOS BREVIVM, is the Chief Clerk in this Court, who receives and keeps all Writs and Records of *Nisi prius*, who carries them into the Treasury of Records. He also enters the Writs of Covenant and Concords of all Fines, and makes out Exemplifications, and Copies of all Writs and Records.

255.

The THREE PROTHONOTARIES, who enter and enroll the Declarations, Pleadings, Affizes, Judgments and other Proceedings: They make out *Venire facias's*, *Habeas Corpus's*, Writs of Enquiry, Executions, Seisins and Privileges, *Habeas Corpus cum Causa*, *procedendo*, *Scire Facias's*, *Audita Querela's*, False Judgments; and all Procefs upon Prohibitions. They also inroll all Recognizances acknowledged in Court.

256.

The THREE SECONDARIES, who are Assistants to the Prothonotary in the Execution of their Office.

257.

The CLERK OF THE WARRANTS, enters all Warrants of Attorney, inrolls Deeds of Bargain and Sale, and Estreats in the Exchequer; and all Issues, Fines and Amercicaments.

258. The

258.

The CLERK OF THE ESSOIGNS, who keeps the Roll, whereon Non-Suits and Eſſoigns are entered. He alſo provides and numbers the Rolls of this Court, which he makes up (after written) each Term, in Bundles.

259.

The FILAZERS, who make out all Proceſſes between the Original Writ and Declaration. They alſo enter the Defendant's Appearance, and make out all Writs of View and Superſedeas.

260.

The FOUR EXIGENTERS, who make all Exigents and Proclamations, in Order to an Outlawry.

261.

The CLERK OF THE JURIES, who makes Writs of *Habeas Corpora Juratorum*, and enters the Continuances, till Verdict given.

262.

The CLERK OF THE INROLLMENTS, who returns all Writs of Covenant, Entry and Seisin. He alſo inrolls Fines and Recoveries.

263.

The CLERK OF THE KING'S SILVER, enters the Substance of the Writ of Covenant.

264.

The CHIROGRAPHER, ingroſſes and delivers the Indentures of Fines to the Parties.

T

265. The

265.

The CLERK OF THE OUTLAWRY, who makes out Writs of *Capias Utlagatum*.

266.

The CLERK OF THE ERRORS, allows the Writs of Error; makes out Writs granted for the Defendant, pending the Writ of Error, and certifies unto the King's Bench, all Records upon Writs of Error, returnable into that Court.

267.

The CLERK OF THE TREASURY, keeps the Records of the Court; makes up and seals all Records of *Nisi prius*; takes for all Searches in the Treasury; and makes all Exemplifications of Records lodged there.

268.

The PROCLAMATOR AND TIPSTAFFS.

269.

The COURT OF EXCHEQUER, which took its Name *a Tabula ad quam affidebant*, and was erected by *William the Conqueror*, after the Model of the Transmarine one, established in *Normandy* long before that Time: And as the *Norman* Exchequer was Ambulatory, and the supreme Court of that Dutchy, where the Lords gave final Judgment, concerning Things of the greatest Importance; so the *English* Exchequer was a Court held before the King (moving with his Household) of the highest Jurisdiction; the Acts whereof, were not to be examined by any of the Ordinary Courts; having Authority touching the Prerogative, as well as the Revenue

Revenue of the Crown ; being the Repository for the Records of all other Courts. It is divided into two Parts, *viz. the Court of Exchequer*, wherein is tried all Causes relating to the King's Treasury and Revenue ; and the *Receipt of the Exchequer*, wherein the Royal Revenue is received and paid. The Proceedings of this Court, are according to Equity and Common Law. The Court of Equity is held before the Treasurer, Chancellor and Barons, but usually before the Barons only, who determine Causes by Bill and Answer, agreeable to the Practice of the High Court of Chancery. In these Suits, the Plaintiff is imagined to be Debtor to the King ; though it is not material whether he be so or not ; it being Matter of Form. The Court of Common Law is held before the Barons alone ; and here the Plaintiff is likewise supposed to be some Way accountable to the King. The leading Process is either a *Subpœna*, or *Quo minus*. This last goes into *Wales*, where no Process of the King's Bench or Common Pleas ought to have Effect, except the *Capias Uilagatum*. The Officers of this Court, are

270.

The LORD TREASURER ; whose Office being esteemed too great a Task for one Person, hath of late Years been executed by Commissioners.

271.

The CHANCELLOR, who hath great Authority in the Management of the Royal Revenues ; being commonly the first Lord of the Treasury ; but when there is a Lord Treasurer, he is Under-Treasurer.

T 2

272. The

272.

The LORD CHIEF BARON, AND THREE OTHER BARONS, to whom the Administration of Justice is committed, in Causes between the King and his Subjects, relative to the Exchequer and the King's Revenues. They are called *Barons*; because Barons of the Realm were used to be employed in that Office.

273.

The PUISNE BARON, who administers the Oath of all High Sheriffs, Under Sheriffs, Bailiffs, Auditors, Receivers, Collectors, Controllers, Surveyors and Searchers of all Customs in *England*.

274.

The KING'S REMEMBRANCER, who hath all Manner of Informations upon penal Statutes used in his Office. He calls to account in open Court, all the great Accountants of the Crown, makes out Writs of Privilege, enters Judgments, and files all Proceedings by Bill and Answer.

275.

The LORD TREASURER'S REMEMBRANCER makes out all Estreats, sets down in his Book the Debts of Sheriffs, and takes their foreign Accounts. He likewise issues out Writs and Process in many Cases.

276.

The TWO CHAMBERLAINS, who keep the Keys of the Treasury, where the Records and Book of Doomsday lie. They also preserve the Standards of Money, Weight and Measure, and sit

fit in Court if they please, but not intermeddle with any Thing, unless relating to Sheriffs, in the choosing of whom they have a Vote.

277.

The CLERK OF THE PIPE, into whose Custody are conveyed out of the Remembrancer's Office, as Water through a *Pipe*, all Accounts and Debts due to the King.

278.

The CONTROLLER OF THE PIPE, writes out Summons's twice every Year to Sheriffs, to levy the Farms and Debts of the Pipe, of which he keeps a Controllment.

279.

The CLERK OF THE ESTREATS, who receives the Estreats out of the Lord Treasurer's Remembrancer's Office, and writes them out to be levied for the King, and he makes Schedules of such Sums estreated, as are to be discharged.

280.

The FOREIGN OPPOSER, who opposes or makes a Charge on Sheriffs, and other Officers, of their Green Wax, *i. e.* Fines, Issues, Amercements, Recognizances, and the like, certified in Estreats annexed to the Writ under the Seal in Green Wax, and delivereth the same to the Clerk of the Estreats to be put in Process,

281.

The AUDITORS, who take the Account of the Receivers of the King's Revenue.

282. The

282.

The FOUR TELLERS, who receive all Money due to the King, and give the Clerk of the Pells a Bill to charge him therewith, and pay all Money pursuant to the Warrant of the Auditor of the Receipt.

283.

The CLERK OF THE PELLIS, who enters on the *Pellis Receptorum* every Teller's Bill, and on the *Pellis Exituum*, by what Warrant the Money was paid.

284.

The CLERK OF THE NIHILS, who enters on a Roll, all such Sums as are *Nibiled* by the Sheriff, upon their *Estreats* of Green Wax, and delivers the same into the Remembrancer's Office, to have Execution done upon it for the King.

285.

The CLERK OF THE PLEAS, in whose Office, all Officers and privileged Persons, are to sue and be sued; and also all Actions prosecuted at Common Law.

286.

AND OTHER INFERIOR OFFICERS.

287.

m 33 Hen. VIII.
C. 12. 3 Inf.
140.

The ^m COURT OF THE LORD STEWARD OF THE KING'S HOUSE; the Judge whereof, is the Lord Steward, or in his Absence, the Treasurer and Controller of the King's House, and Steward of the *Marshalsea*, who may enquire of, hear and deter-

mine

mine all Treasons, Murders, Manlaughters, Bloodshed, and other malicious Striking, whereby Blood is shed in any of the Palaces and Houses of the King, or where his Royal Person abides.

288.

The COURT OF MARSHALSEA; whose Power extends twelve Miles about *Whitehall*. It is a Court of Record to try and determine Causes between the King's Servants; having Jurisdiction of all Matters within the Verge of the Palace, and of Pleas of Trespass, where either Party is of the King's Family, and all other personal Actions, wherein both Parties are Servants to the King. The Proceedings here are either by *Capias*, or Attachment, which is served on the Defendant by one of the Knight Marshal's Men, who takes a Bond for his Appearance at the next Court; upon which Appearance, he must give Bail to answer the Condemnation of the Court; and the next Court-Day after Bail is taken, the Plaintiff must declare, and within four or five Court-Days, the Cause is brought to Trial, according to the Custom of the Common Law Courts. But if the Cause is considerable, it is usually removed into the King's-Bench or Common Pleas, by *Habeas Corpus cum Causa*. The Judges of this Court are the Steward of the King's Household; the Knight Marshal for the Time being, and the Steward of the Court, or his Deputy. Also this Court is kept twice a Week in *Southwark*.

289.

The ⁿ COURT OF ADMIRALTY, is a Court of ⁿ 4 Inst. 134; Record to decide all Maritime Causes. The Pro-¹³⁵ceedings are in the Name of the Admiral by Libel, and the Plaintiff and Defendant enter into a Bond for

for Appearance, and to abide the Sentence of the Court.

290.

• 3 Inst. 52.

The COURT MARTIAL, is for punishing Desertion, Mutiny, and all other Offences of Soldiers, in Time of War. For if ° any Person in Commission in Time of Peace, gives Sentence of Death according to the *Martial Law*, it is against *Magna Charta*, and Murder; though late Acts of Parliament have enabled the King to hold Courts Martial in Time of Peace.

291.

• 4 Inst. 266.

The COUNTY COURT, is for the Government of the County. The Power of this Court is much reduced by *Magna Charta*, whereby *Nullus Vicecomes, Constabularius, Coronatores, vel alii Ballivi nostri teneant placita Coronæ nostræ*; and by 1 Ed. IV. C. 1. ° Though it hath Cognizance of certain Trespasses and Debts under Forty Shillings; and by Virtue of the Writ of *Justicies*, above that Sum. This Court is held once every Month by the Sheriff, or his Deputy.

292.

• West. Symb.
Lib. 4. Sect.
282.

The HUNDRED COURT, of which there are very few or none remaining since the 14th of Ed. III. whereby their Power devolved ° to the County Court, but what are Franchises; wherein the Sheriff hath not any Thing to do by his ordinary Jurisdiction, unless they of the Hundred refuse to do their Duty.

293.

The COURT BARON is kept by the Lord of a Manor, either by *Common Law*, or *Custom*: By
Common

Common Law, where Freeholders being Suitors, are the Judges, and may keep the Court once every three Weeks to try Actions under Forty Shillings: Though on a Recovery of Debt, they have not Power to make out Execution, but must distrain the Defendant's Goods, and retain them till Satisfaction made: By *Custom*, concerning Copyholders and customary Tenants, from whence this Court is called the *Customary Court*; taking and passing Estates by Surrenders, Forfeitures and Admittances. It is held but once or twice in the Year, unless on Purpose to grant an Estate, and then it is called a private Court. The Homage Jury of this Court are to enquire that their Lord doth not lose his Services, Duties and Customs; and that the Tenants keep their Lands and Tenements in Repair. They are to present all common and private Nuisances, which may prejudice the Lord. And publick Trespasses, must be punished in this Court by Amerciament, on presenting the same. And by Statute *Extenta Manerii* 4 Ed. I. divers Things are to be inquired of by this Court.

294.

THE COURT LEET, ^r which is called *the View of* ^{r 4 Inst. 261,} *Frankpledge*, because the King is to be there certi- ^{263.} fied, how many people are within every Leet, and have an Account of their good Manners and Government. And every Person of the Age of twelve Years, who hath remained there a Year and a Day, may be sworn to be faithful to the King. Also it is a ^s Court of Record, ordained for punishing Of- ^{s Danv. Abr. 289.} fences against the Crown, having ^r Jurisdiction of ^{r 1 Ed. III. 18} all Offences under High Treason; but those punish- ^{Ed. II. 14 & 15} ed with Loss of Life or Member are only to be pre- ^{Hen. VIII. 2} sented here, that they may be certified to the Jus- ^{& 3 Ed. VI. 31} tices of Assise. ^{Eliz. 1 Jac. I. C. 5.} The Judge, who is the Steward ^{u 6 Rep. 12.} of ^{2 Inst. 199,}

U

^x 1 Inst. 115.
² Inst. 72.

of the Manor, hath Power to elect Officers ; ^x and keeps the Court twice a Year, *i. e.* within one Month after *Easter* and *Michaelmas*, at a certain Place within the Precinct ; but if it has been a Custom to keep this Court at any other Time of the Year, it is good if due Warning is given. The usual Punishments of this Court are Fines and Amerciaments, for which the Lord may have Action of Debt ; tho' the first is assessable by the Steward, the latter by a Jury composed of twelve Freeholders, or Resiants.

295.

⁷ Crompt. Jurisd.
^{230.} 4 Inst.
^{260.} 2 Hawk.
 P. C. 55.

² Wood's Inst.

³⁷ Ed. III. C.
 15.

The ^y COURT OF TURN, is a Court of Record and the King's Leet through all the County, of which the Sheriff is Judge ; and derives its Name from the Sheriff's taking a *Turn* or *Circuit* about his Shire, and holding this Court in several Places ; for the Word *Turn*, properly taken, doth not signify the Court of the Sheriff, but his Perambulation. Also, the Sheriff may enquire in his *Turn* of Treason and Felonies, by the Common Law, as well as the lowest Offences against the King ² ; but great Part of the Business of the Turn and Leet, through the Negligence of Sheriffs and Stewards, hath devolved on the Quarter-Sessions. This ² Court is to be held within a Month after *Easter* and *Michaelmas* ; and if it is held in any other Manner, the Sheriff loses his Turn for that Time.

296.

⁴ Inst. 272.

The ^b COURT OF PIEPOWDER, is a Court of Record held in Fairs during the Time they last, to do justice to Buyers and Sellers, and for Redress of Disorders committed in them : So called, because they are most usual in the Summer, when the Suitors to the Court have *Dusty Feet*, and from the Ex-

Expedition in hearing Causes proper thereto, before the Dust goeth off the Feet of the Plaintiffs and Defendants. The Steward before whom this Court is held is the Judge, and the Trial is by Merchants and Traders in the Fairs, and the Judgment against the Defendant shall be *quod Amercietur*; but if the Steward proceeds contrary to the Statute 17 Ed. IV. C. 2. he shall forfeit five Pounds.

297.

^c JUSTICE-SEAT, is the highest Forest Court held before the Lord Chief Justice in *Eyre* of the Forest, after forty Days Warning, where Judgment is given, and Fines set for Offences. Fines and ^d Amerciaments of the Justices in *Eyre* for false Judgment or other Trespas, shall be assessed upon the Oaths of Knights and other honest Men, and estreated into the Exchequer. Also, ^e Justices in *Eyre* must appoint a Time for delivering in all Writs by the Sheriff.

^c Manw. For.
Law, C. 24.

^d 3 Ed. I. C. 18.

^e 13 Ed. I. C. 10.

298.

^f SWAINMOTE, is a Court incident to a Forest, held by the Charter thrice in the Year, before the Verderors, who are the Judges. Unto ^g this Court all Freeholders owe Suit and Service, and all Officers of the Forest are to appear every *Swainmote*; also, out of every Town and Village in the Forest, four Men and a Reeve shall appear; or on Default, shall be amerced and distrained.

^f Crompt. Jurisd.
108. 3 Hen.
VIII. C. 18.
^g Game Law,
par. 2. p. 19, 20.

299.

THE COURT OF ATTACHMENT, formerly called *Woodmote*, is the lowest Court of the Forest, and seems to have received this new Name from the Business done therein, which is for the Verderors of the Forest to receive the Attachments of Of-

fenders against *Vert* and *Venison*, taken by the Foresters, and to inrol them, that they may be punished at the next *Justice-Seal*. The Attachment is either by Goods and Chattels, by Body, Pledges and Mainprize, or by Body only. This Court is held every forty Days, whence it is also denominated the Forty Days Court.

300.

^h 3 Eliz.
4 Inst. 227.

ⁱ 3 Cro. 73.

^k Wood's Inst.
516.

The ^h COURTS OF UNIVERSITIES, belonging to *Oxford* and *Cambridge*, are of a particular Nature; granted by Charter, and confirmed by Authority of Parliament. ⁱ They are called the *Chancellor's Courts*, and are kept by the Vice-Chancellors of the Universities. Their Jurisdiction extends to all Causes Ecclesiastical and Temporal, (except for Maihem, Felony, and relating to Freehold) where a Scholar, Servant, or Minister of the Universities, is one of the Parties to the Suit. The Causes are managed by Advocates and Proctors, who proceed according to the Practice of the Civil Law; and the Judges in their Sentences follow the Justice and Equity of the Civil Law, Statutes and Customs of the Universities, and the Laws of the Land. ^k Appeal lies from hence to the Congregation, next to the Convocation, and then to the King in Chancery by his Delegates.

301.

^l 4 Inst. 247.

The ^l COURT OF HUSTINGS is the highest Court of Record holden at *Guildball* for the City of *London*, before the Lord Mayor or Aldermen, Sheriffs and Recorder. This Court determines all Pleas, real, personal, and mixt, that arise within the City and Suburbs thereof. It likewise secures the Laws, Rights, Franchises, and Customs of the City.

302. The

302.

The COURT OF CONSCIENCE belongs to the City of *London*, ^m and is held before two Aldermen and four Commoners, who sit by Commission twice a Week, to hear and determine all Matters between Citizens and Freemen of *London*, in Cases under forty Shillings. And if ⁿ any Person affronts or insults any of the Commissioners, on their certifying the same to the Mayor, he shall punish the Offender by Fine, not exceeding twenty Shillings, or he may imprison him ten Days.

^m 1 Jac. I. 3
3 Jac. I. C. 15.

ⁿ 14 Geo. II.
C. 10.

303.

The COURT OF COMMON COUNCIL, consisting of two Houses; one where the Lord Mayor and Aldermen sit; the other where the Commoners sit. By this Court are made all the Bye-laws that bind the Citizens.

304.

The CHAMBERLAIN'S COURT, where every Thing relating to the Rents and Revenues of the City; also the Affairs concerning Apprentices and Servants are transacted.

305.

° The WARDMOTE is a Court kept in every Ward in *London*, to inquire into and present all Defaults concerning the Watch and Constables, that neglect their Duty, and to make other Regulations for the good Government of the Ward,

° Lex. Lon. 1354

306.

The COURT OF HALYMOTE, belonging to the City of *London*, for the Regulation of Bakers.

307. The

307.

2 Geo. II.
C. 26.

34 & 35 Hen.
VIII. C. 26.

The ^P COURT OF CURSUS AQUÆ, is a Court held by the Lord of the Manor of *Gravesend*, for the better Management of Boats and Barges, using the Passage on the River of *Thames* from thence to *London*, and plying at *Gravesend*. And the ³ COURTS OF WALES, which are settled by Act of Parliament, and are to proceed according to the Laws of *England*. Also, Errors in Judgment may be redressed by Writ of Error out of *Chancery* in *England*, returnable in the *King's Bench*. Besides these Courts, there are other inferior Courts.

308.

7 H. P. C. 218.
3 Inst. 108.

The TEMPORAL PUNISHMENTS not only extend to the Principals who actually commit them, but to the Abettors who encourage and promote their being done, and the Accessaries guilty by Participation, either *before* or *after* the Fact; *before*, when they command, procure or assist others to do it, being absent themselves, for if they are present, they are Principals; *after*, when they receive or comfort the Principals, knowing that they have committed Murder or Felony. But ⁷ this does not extend to a Woman, who receives or assists her Husband, tho' it does to a Husband receiving or assisting his Wife. Also, those Punishments are adapted to the several Degrees of Crimes, as

309.

BEHEADING, usually inflicted on Peers of the Realm, who commit any capital Crime; for tho' a Peer receives the same Sentence, as a common Subject, yet the Warrant is made out for him to be beheaded, and the *post mortem* Part of the Sentence is also remitted,

310. DRAWING,

310.

¹ DRAWING, HANGING, and QUARTERING, ^{25 Ed. III. C.}
with Corruption of Blood and forfeiture of Lands ^{2. 13 Eliz. C.}
and Goods to the King, for compassing and imagin- ^{2. 23 Eliz.}
ing the Death of the King, Queen, or their eldest
Son and Heir; violating the Queen, the eldest
Princess unmarried, or the Wife of the eldest
Prince; levying War against the King in his Realm;
adhering to his Enemies; giving them Aid and
Comfort; counterfeiting the King's Great or Privy
Seal; counterfeiting, impairing, or lightening the
Coin of the Land; bringing false Money into the
Kingdom like to the Money thereof, to make Pay-
ment therewith in deceit of the King and his Peo-
ple; killing the Chancellor or other Officers, when
they are in the actual Execution of their Offices;
appealing to *Rome*, or obtaining from thence any
Bull or Absolution.

311.

¹ DRAWING AND HANGING, with Corruption ^{25 Ed. III. C.}
of Blood, and forfeiture of Lands to the Lord: ^{2.}
Where a Servant kills his Master or Mistress, or a
secular or ecclesiastical Person his Superior to whom
he owes Obedience.

312.

¹ BURNING, when a Woman kills her Husband. ^{1 Inst. 37.}

313.

HANGING, with Forfeiture of Lands not intailed,
and all Goods and Chattels; also Corruption of
Blood, unless otherwise ordained by Statute, where
a Person is guilty of Murder, Grand Larceny,
Robbery, Burglary, Arson, or House Burning,
Breach of Prison, or other Felonious Crimes.

314.

^z 31 Car. II. C. TRANSPORTATION, ^z done at the Desire of one
^z 4 Geo. I. convicted of Felony.
C. 11.

315.

^y 2 Inst. 46, 50, IMPRISONMENT, ^y must be according to Law,
253, 282. and extends not only to a Gaol, but a House,
Stocks, or Pillory; for so long as a Man is re-
strained from going where he pleases, he is im-
prisoned.

316.

^z 3 Inst. 218. ^z FINES, or Sums of Money paid to the King
³ Salk. 32. for any Contempt or Offence against the Govern-
ment.

317.

^a Termes de la ^a And AMERCIAMENTS, or Penalties assessed by
ley, 40. the Peers or Equals of the Person amerced, for
which he puts himself at the Mercy of the King or
^b Kitch. 78. Lord, and ^b differ from Fines in this, because
Fines are certain, being given by some Statute;
whereas Amerciaments are arbitrarily imposed.

C H A P. III.

OF PARTICULAR CUSTOMS.

I.

PARTICULAR CUSTOMS ^c are local, belong- ^{e 3 Salk. 112.}
 ing to some certain Place; ^d they must be con- ^{d 2 Roll Abr.}
 strued according to vulgar Apprehensions, and ^{e 70.}
 taken strictly, being in derogation of the Common
 Law, and have four inseparable Incidents, ^{e viz.} ^{e 1 Lill. Abr.}
 375.

2.

REASONABLE COMMENCEMENT, otherwise they
 are unlawful; for Continuance of Time cannot
 make *Malum in se* good: 'Though Customs ^{f 8 Rep. 126.}
 against Common Rights and Rules of the Law,
 are valid. CERTAINTY; uncertain Things not
 continuing Time out of Mind.

3.

^g ANTIQUITY, to prove it hath been Time im- ^{g Davis Rep.}
 memorial; (or Threescore Years, as limited by ^{32.}
 Statute) so that no Man living hath heard or
 known any Proof to the contrary.

4.

And CONTINUANCE, to testify the doing thereof,
 Time out of Mind, without any Interruption:
 Therefore, though voluntary at first, by Usage
Consuetudo pro Lege servatur; for when a reasonable
 Act does prove beneficial to the Inhabitants or Oc-
 cupiers of the Place, where performed, a frequent
 Repetition ensues, whereby it becomes a Custom,

X

which

which being continued without Interruption, Time out of Mind, obtains the Force of a Law, as

5.

^a Kitch. 102.

ⁱ Pref. 3 Mod. Rep.

^k 2 Lev. 138.

^l 1 Salk. 243.

^b BOROUGH ENGLISH, that vests the Right of Descent in the youngest Son, or if the Owner hath no Issue, in the youngest Brother; and this ⁱ Custom proceeded from the Lords of certain Lands, having the Privilege to lie with their Tenant's Wives the first Night after Marriage. Wherefore the Tenants disinherited their eldest Son, whom they imagined to be their Lord's Bastards. But *Littleton* says, it arose from the youngest being presumed in Law, to be least able to provide for himself. ^k However this Custom goes with the Land, and guides the Descent to the youngest; although there be a Devise to the contrary. And ⁱ if a youngest Son dies without Issue Male, leaving a Daughter, she shall inherit Jure Representationis.

6.

^m Izack's Antiq. of Exet. 48.

^m SHORTFORD, which is a Custom in the City of *Exeter*, whereby the Lord of the Fee, recovers Rent due to him, when no Distress can be levied for the same, by coming to the Tenement, and taking thence a Stone or some other inanimate Thing, and carrying it before the Mayor and Bailiffs. This being done Seven Quarter Days successively, and no Rent or Arrears being paid within that Time, the Tenement is adjudged to the Lord for a Year and a Day; and Proclamation is forthwith made, that whoever claims any Title to the said Tenement, must appear within the Year and Day, and satisfy the Lord for the Rent and Arrears. If no Appearance is made, nor the Rent paid, the Lord comes again to the Court, and prays that according to the Custom, the said Tenement

nement may be adjudged to him in his Demesne as of Fee ; which is done accordingly. This Custom is called *Shortford* ; because it signifies in *French*, to foreclose.

7.

ⁿ GAVELKIND, which is a Custom in *Kent*, ⁿ Litt. 210. whereby the Lands of the Father, are equally divided at his Death, among all his Sons, or the Land of the Brother among all the Brothers, if he hath no Issue of his own. And ^o all Lands in *Kent*, ^o 1 Mod. 98. shall be taken to be such, except those which are ² Sid. 153. disgavelled by particular Statutes.

8.

^p FREE BENCH, or that Estate in Copyhold ^p Kitch. 102. Land, which the Wife hath on the Death of her Husband for her Dower, according to the Custom of the Manor ; if she was a Virgin when espoused : And she is to hold the Lands only so long as she lives sole and continent ; though in the Manor of *East and West Enbourne*, in the County of *Berks*, and the Manor of *Torre* in *Devonshire*, and other Parts in the West of *England*, after committing Incontinency, if the Widow comes into the Court of the Manor, riding backwards on a black Ram, with his Tail in her Hand, saying,

“ Here I am,
Riding upon a black Ram,
Like a Whore as I am :
And for my *Crincum Crancum*,
I have lost my Binkum Bankum ;
And for my Tail's Game,
Have done this worldly Shame ;
Therefore pray Mr. Steward let me have my
Land again.”

The Steward is bound by Custom to re-admit her.

¶ 2 Danv.
Abr. 311.

¶ 2 Nelf. 139.

¶ 2 Danv. 310.
1 Lill. 378.

† Privil Lond..

¶ Comber. 384.

¶ Cro. Car. 516.

¶ 1 Roll. Rep.
106.

CONSUETUDINES LONDINI, whereby ^a the Goods and Chattels of a Freeman deceased, is divided into three Parts; the Wife to have one; the Executors another, to discharge Debts and Legacies; and the Children unprovided for, the other Third. And if ^r there is only Children, half of his personal Estate goes to them, and he may dispose of the other Moiety, except a Freeman makes a Will pursuant to the 11 Geo. II. C. 18. ^s *Action* on the Case, lies for calling a married Woman Whore, because such Women are carted. ^t A *Woman* that useth any Trade is chargeable, although married, as a Feme Sole Merchant, and must plead as such, and if condemned, suffer Imprisonment, till the Debt is paid. Also her Bail may be sued if she absents herself, the Husband not being concerned therein. *Every* ^u *Tenant* at Will of any House above Forty Shillings *per Annum*, within the same, ought to give or to have half a Year's Warning on leaving it. ^x Also if any Custom of *London*, be pleaded and denied, it shall be tried by Writ to the Lord Mayor and Aldermen, to certify whether there be such a Custom; who shall make Certificate by the Mouth of their Recorder. ^y Likewise the Courts of *Westminster*, take Notice of Course of the Customs of *London*, but not of any other Place without being alledged.

MAI INDUCTIO, is a Custom observed in some Parts of *England*, whereby the Priest and People of Country Villages, go in Procession to some adjoining Wood on a *May* Day Morning, and return in a Kind of Triumph with a May-Pole, Boughs,

Boughs, Flowers, Garlands, and other Tokens of the Spring.

11.

MORES MERCATORUM; by which ² Merchants ² Lex. Mercat. C. 10. Fo. 69. that give Characters of Strangers, to those who sell them Goods, are liable to the Debts of such Strangers for the Goods sold. Or ² if a Merchant orders his Factor to buy Goods of a particular Person, he is Debtor, and not the Factor; but if a Merchant orders his Factor to buy Goods, without saying of whom, the Factor is Debtor; though the Goods come to the Use of the Merchant. ² 1 Lill. 376.

12.

CENSURE is a Custom observed in divers Manors of *Cornwall* and *Devonshire*, whereby all Persons residing therein, above the Age of Sixteen, are cited to swear Fealty to the Lord, and pay him Eleven-pence *per* Head, and One Penny *per Annum* ever after.

13.

MARCHET, is a Custom grounded on the Abrogation of the Privilege claimed by the Lord to lie the first Night with the Bride of his Tenant; whereby every Tenant pays a Fine at the Marriage of his Daughter. In the Manor of *Dinevor*, in the County of *Carmarthen*, this pecuniary Custom is Ten Shillings; and in the Manor of *Builtb*, in the County of *Radnor*, a Noble, or Six Shillings and Eight-pence.

14.

CHILDWIT, is a Custom within the Manor of *Writtel*, in the County of *Essex*, whereby every reputed

puted Father of a Child, not born in Marriage, pays Three Shillings and Four-pence to the Lord.

15.

LANDCHEAP, is a Custom at *Malden* in *Essex*, whereby for certain Houses and Lands, sold within that Place, Thirteen-pence in every Mark of the Purchase-Money, must be paid to the Town, which claims this Custom *Inter alia* by a Grant from the Bishop of *London*, made *Anno 5 Hen. IV.*

16.

MORTUARY, is the Thing that is due by Custom to the Church, at the Death of a Person; and by the 21 *Hen. VIII.* are to be paid in this Manner: Ten Shillings when the Person dies possessed of Goods to the Value of Forty Pounds or above, after Debts paid: Six Shillings and Eight-pence, if of Thirty Pounds and under Forty Pounds: Three Shillings and Four-pence, if Six Pounds Thirteen Shillings and Four-pence Value, and under Thirty Pounds; and when under Six Pounds Thirteen Shillings and Four-pence Value, no Mortuary is to be paid. Where^b by Custom, a Mortuary hath not usually been paid, if a Person be libelled in the Spiritual Court, he may have a^c Prohibition, upon which the Custom may be tried.

^b 2 *Lutw.* 1066.

³ *Mod.* 268.

^c 21 *H. VIII.*

17.

And BULL AND BEAR, ^d which according to the Custom of some Places, must be kept by the Parson for the Use of the Parishioners, in Consideration of his having Tithes of Calves and Pigs.

^d 1 *Roll. Abr.*

559. 4 *Mod.*

241.

C H A P. IV.

O F S T A T U T E S.

1.

STATUTES are Rules and Orders made by the King, Lords and Commons in Parliament, for preventing some Evil, or promoting some good; and are,

2.

GENERAL, when relating to the King or the Publick, as those concerning the Royal Prerogatives, ^e or the Trade of the Kingdom.

^e Dyer 75.

3.

Or SPECIAL, when they only regard some particular Person or Thing, as Bills of Naturalization or Statutes, touching ^f Sheriffs or any particular Mystery, ^g and Statutes continue in force, although the Records are lost by the Injury of Time: Yet if one is made against Reason, or impossible to be performed, it is void. Likewise ^h old ones must give Place to new, where they are contrary; but when there is a seeming Variance between two Statutes, and no Clause of *Non Obstante* in the latter, such Construction must be made, that both may stand. And ⁱ it is a Rule in Law, that the Courts at *Westminster*, ought to take Notice of a General Statute without pleading it: Though they are not bound

^f Plowd. 38.

Dyer 119.

^g 4 Rep. 76.

^h 1 Inst. 587.

ⁱ 11 Rep. 56.

Dyer 347.

ⁱ 1 Inst. 8.

2. 5 Rep. 14.
 7 Rep. 32.
 21 Rep. 71.

bound to do the same by a special or private one. Also^k Acts of Parliament do not bind the King, if he is not especially named; unless they concern the Commonwealth, suppressing Wrong or Fraud; but he may take the Benefit of any Statute, wherein he is not named.

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